Bulletin 147

Law Serial 10

DEPARTMENT OF THE INTERIOR

FRANKLIN K. LANE, Secretary

BUREAU OF MINES

VAN. H. MANNING, Director

ABSTRACTS OF CURRENT DECISIONS

ON

MINES AND MINING

REPORTED FROM
SEPTEMBER TO DECEMBER, 1916

BY

J. W. THOMPSON

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

Bulletin 147 Law Serial 10

DEPARTMENT OF THE INTERIOR
FRANKLIN K. LANE, SECRETARY
BUREAU OF MINES
VAN. H. MANNING, DIRECTOR

ABSTRACTS OF CURRENT DECISIONS

ON

MINES AND MINING

REPORTED FROM
SEPTEMBER TO DECEMBER, 1916

BY

J. W. THOMPSON

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

The Bureau of Mines, in carrying out one of the provisions of its organic act—to disseminate information concerning investigations made—prints a limited free edition of each of its publications.

When this edition is exhausted, copies may be obtained at cost price only through the Superintendent of Documents, Government Printing Office, Washington, D. C.

The Superintendent of Documents *is not an official of the Bureau of Mines.* His is an entirely separate office, and he should be addressed:

SUPERINTENDENT OF DOCUMENTS,
Government Printing Office,
Washington, D. C.

The general law under which publications are distributed prohibits the giving of more than one copy of a publication to one person.

The price of this publication is 10 cents.

First edition, May, 1917.

INTRODUCTORY NOTE.

This bulletin is the ninth of its kind to be published by the Bureau of Mines, the eight preceding being Bulletins 61, 79, 90, 101, 113, 118, 126, and 143. Similar bulletins will be published with sufficient frequency to keep reasonably current the records of decisions of Federal and State courts of last resort on questions relating to the mineral industry.

The bureau will gladly welcome and consider any suggestions looking to improvement in the matter contained in these bulletins or the manner in which it is presented. The purpose of the bulletins is to improve directly or indirectly mining conditions and to promote the health and safety of miners by the prompt publication of decisions, and to this end it is desired that the bulletins reach all persons who are interested.

GENERAL SUBJECTS TREATED.

CONTENTS.

ABSTRACTS OF CURRENT DECISIONS ON MINES AND MINING, SEPTEMBER TO DECEMBER, 1916.

By J. W. Thompson.

MINERALS AND MINERAL LANDS.

MINERALS.

RAILROAD GRANT—MINERALS.

Diatomaceous or infusorial earth when found in such quantity and quality as to render lands containing deposits valuable therefor are mineral lands within the meaning of the mining laws and must be excepted from grants to the Central Pacific Railway Company.

Central Pacific Ry. Co., In re, 45 Land Decisions, 223, p. 226.

RAILROAD GRANT—CLASSIFICATION.

If any evidence of minerals is found upon lands within a railroad grant and the showing is sufficient in the opinion of prudent and qualified persons to warrant further exploration and expenditure, with reasonable prospects of success, then the land can not be classified as nonmineral and is not subject to the grant to a railroad company. But where there is no present indication of minerals nor any geological evidence upon which to base a mineral finding, land should not be classified as mineral, or held for further classification and reserved from the railroad's grant, upon the surmise that future prospects might disclose evidences of minerals.

Southern Pacific Ry. Co., In re, 45 Land Decisions, 326, p. 329.

INDEMNITY SELECTION BY RAILWAY COMPANY.

Under section 3 of the act of July 2, 1864 (13 Stat., 365), and the joint resolution of May 31, 1870 (16 Stat., 378), the Northern Pacific Railway Company could take coal and iron land within its primary or grant limits. It could not base an indemnity selection upon the claim that certain land was coal or iron in character, as such land was not lost to it as part of the grant. But the company was

authorized to select other lands in lieu of those lost because of their mineral character, but the word "mineral" did not include iron or coal, and, accordingly, the railroad company was entitled to take coal lands under its indemnity selection.

Northern Pacific Ry. Co., In re, 45 Land Decisions, 152, p. 154.

SALE AND CONVEYANCE.

FRAUDULENT REPRESENTATIONS.

The owner of mineral lands represented to a prospective lessee for the purpose of inducing such prospective lessee to accept a lease and pay a large sum of money therefor, that he had caused to be sunk five drill holes on the tract of land and that each drill hole had developed and opened up a large body of high grade zinc ore, 12 feet in thickness at a level and running 62 to 74 feet from the surface and running from 10 to 25 per cent pure zinc; that he had further developed the ore bodies by sinking a shaft on one drill hole and extending drifts therefrom and that the shaft and drifts showed that the drill records of the drill holes were correct. These statements and representations are not a mere expression of opinion, but the representations are actionable if false and if the prospective lessee to whom they were made in good faith relied or acted theron.

Bowen *v.* Matlack (Missouri), 188 Southwestern, 99, p. 100, July, 1916.

CONTRACT OF PURCHASE—CONSTRUCTION AND ENFORCEMENT.

Under a contract of sale and purchase of a mining claim by which payment should be made from net profits to be determined in a specified manner, the fact that it was soon demonstrated that the claim could not be worked at a profit without a change in the method of working and without increasing the expense, is not ground sufficient to justify equity in refusing relief because of the speculative character of the contract known to both parties. Equity never presumes to rewrite contracts for parties merely because of disappointed expectations.

Blanck *v.* Pioneer Mining Co., 159 Pacific, 1077, p. 1079, September, 1916.

CONTRACT OF PURCHASE—PAYMENT FROM NET PROFITS.

The purchaser of a mining claim agreed by his contract of purchase that when he had realized as net profits from the working of the claim the sum of $55,625, he would pay monthly thereafter to the seller one-half of the net profits derived from the working of the claim until the seller should receive the sum of $14,375 therefrom. It was provided by the contract that the net profits should be com-

puted by deducting from the gross amount of gold produced the royalty to be paid by the owners; the actual expense of labor engaged in mining operations, including the wages of the men and reasonable compensation for any teams used; cost of board and lodging for men, fuel, and a charge of 25 cents per miner's inch of 11½ gallons for each 24 hours of water used. The word "including" as used in the contract, introduces an enlarging definition of the preceding general words "actual expense of the labor," and thus excludes the idea of a further enlargement than that furnished by the enlarging clause so introduced. The word is obviously used in the sense of its synonyms "comprising, comprehending, embracing." In view of this, there is no warrant in the contract for including in the deduction from the gross output the cost of materials and supplies, such as shovels, picks, and labor. The purchaser under the terms of the contract was not authorized to charge for any of the water more than 25 cents per miner's inch, and an additional charge can not be made on the theory that the purchaser was to recover the greatest amount of gold at a minimum cost and that he could therefore substitute for the steam point method the hydraulic method and deduct the additional cost of water.

Blanck *v.* Pioneer Mining Co., 159 Pacific, 1077, p. 1079, September, 1916.

PAYMENT FROM NET PROFITS—ESTOPPEL.

The purchaser of mining property, payments for which are to be made from the net profits, and the net profits to be computed and determined by deducting from the gross amount of gold produced the costs of operation and production, can not increase the deductions and claim credit for expenses not embraced in the contract on the ground of acquiescence and estoppel on the part of the seller, where no account was made and no statement given as to such increased deductions; and where the seller did object when he received the first report of such increased deductions.

Blanck *v.* Pioneer Mining Co., 159 Pacific, 1077, p. 1080, September, 1916.

OPTION CONTRACT—CONSTRUCTION AND LIABILITY.

An option contract for the sale of certain described mining property at a fixed price can not be treated as two separate and divisible contracts, one an option contract for the sale of the property to the optionee at the price stated, the optionee to make no profit unless and until he sold the property, and the other an agency contract whereby the optionee became a mere broker who earned as a commission everything above the stated price received from the purchaser he found and whose duty was done when he brought together his

principal and a purchaser. The agreement taken as a whole is of a unitary nature and was an option contract contemplating that the optionee or his assignee should buy the property and that the optionee should have as his profit any sum he could make upon the sale of the option or a sale of the property.

Levy *v.* Hoffman, 235 Federal, 46, p. 48.

VALIDITY OF OPTION AGREEMENT.

An agreement by which a land owner agreed to convey, when patents were issued, an undivided interest in two described tracts of land and give the purchaser for 50 years the exclusive right and option for a mining lease on the undivided interests of the seller, is not void on the ground that it is against public policy. Contracts excepting ores and minerals from grants of land with a grant or a reservation of the right to enter upon the land and mine and remove the ore or mineral are valid and not contrary to, but in harmony with, public policy.

Mineral Land Inv. Co. *v.* Bishop Iron Co. (Minnesota), 159 Northwestern, 966, p. 968, November, 1916.

UNAUTHORIZED TRANSFER OF OPTION CONTRACT.

An unauthorized person can not surrender an optional contract, made in his name, but in equity and right belonging to another, and substitute therefor another optional contract having the identical terms and conditions excepting the purchase price of the mine and mineral lands. Where no sale was made of the property there can be no claim of ratification or acquiescence on the part of the principal.

Cerro Cobre Development Co. *v.* Duvall (Arizona), 160 Pacific, 25, October, 1916.

DOWER IN OPENED MINES.

The reason of the rule permitting dower in opened mines is that the land had been devoted to mining purposes by the owner of the fee during his life time, and the mode of enjoyment and source of profit fixed and determined by him; and in such case mining is a mode of enjoyment fixed by the owner and to extract and take the minerals is but to take the accruing profits from the land.

Daniels *v.* Charles (Kentucky), 189 Southwestern, 192, p. 194, November, 1916.

RIGHT OF LIFE TENANT TO OPERATE MINE.

Mining by a life tenant will be allowed if the former owner of the fee has imposed upon it the character of mining land by executing an enforceable lease for that purpose prior to the commencement of

the life estate, although no mines had in fact been opened thereunder until after the commencement of the life estate.

Daniels *v.* Charles (Kentucky), 189 Southwestern, 192, p. 194, November, 1916.

RECOVERY OF POSSESSION—STATUTE OF LIMITATIONS.

On December 22, 1886, the owners of lands agreed by written instrument to convey to a purchaser certain undivided interests in two tracts of land and give the purchaser a 50-year option and exclusive right for a mining lease, the purchaser to pay a certain stipulated price for the interests purchased. At the time of the execution of the agreement the land was wild, unimproved, and unpatented, and at the time of the commencement of the action for possession and to determine adverse claims neither party was in possession. Under such circumstances the 15-year statute of limitations, which provides that no action for the recovery of real estate or its possession shall be maintained unless it appears that the plaintiff or his predecessor was seized within 15 years preceding the action, has no application as against a valid option.

Mineral Land Inv. Co. *v.* Bishop Iron Co. (Minnesota), 159 Northwestern, 966, p. 968, November, 1916.

SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.

SEPARATION OF SURFACE AND MINERAL ESTATES.

The owner of real estate may sell land to one person, the coal, iron, gas, or oil to others, giving to each purchaser a deed in fee simple for his particular stratum, while he retains the surface for agricultural purposes precisely as before the sale. The severance becomes complete for all legal and practical purposes. Each separate layer or stratum becomes subject to taxation, levy, encumbrance, or sale, precisely like the surface. The possession of the soil by the owner for the purpose of tillage gives him no possession of the underlying minerals. In order to make a holding adverse to one who has reserved or granted to him minerals in place, there must appear to have been some denial of his right of assertion of the claim inconsistent therewith, but the use of the surface for agricultural purposes is not an assertion of the right inconsistent with the right of the owner of minerals to mine under the surface for the purpose of extracting them.

Northcut *v.* Church (Tennessee), 188 Southwestern, 220, p. 221, August, 1916.

ADVERSE POSSESSION—STATUTE OF LIMITATIONS.

Where there has been a severance of the surface and the minerals underlying the surface, the possession of the surface therefore can not be the possession of the severed mineral, as distinct estates are

created by the severance. The acts of possession required for the surface and those for the mineral are different; the latter requiring some form of mining, or activities directly related thereto. The surface owner setting up the statute of limitations must establish possession of the mine as such, independent of his possession of the surface and such possession must be actual, notorious, exclusive, continuous, peaceable, and hostile for the statutory period. In these respects the surface owner is in no better position than a stranger. The necessary actual possession to overcome the statute is demanded by opening of mines and carrying on mining operations.

Northcut *v.* Church (Tennessee), 188 Southwestern, 220, p. 223, August, 1916.

POSSESSION OF SURFACE—EFFECT ON MINERALS.

The possession of the surface of land by one who has by his conveyance of the mineral interest severed the latter from the surface is not the possession of the underlying severed mineral interest, and such possession does not inure to the owner of such mineral interest.

Northcut *v.* Church (Tennessee), 188 Southwestern, 220, p. 223, August, 1916.

CONVEYANCE OF MINERAL BY SURFACE OWNER—EFFECT AND RIGHTS.

Where the owner of the surface of lands conveys the underlying minerals to another he does by implication of law convey the right to obtain access to the mineral through the surface, and as against such purpose the surface owner does not hold the surface adversely to the mineral owner. The right to take the underlying mineral is an incident to the conveyance of the mineral right and the right exists immediately on the severance of the two estates.

Northcut *v.* Church (Tennessee), 188 Southwestern, 220, p. 224, August, 1916.

POSSESSION OF MINERALS—ADVERSE POSSESSION.

If land should be divided by the vendor into two estates by severance of the surface and the mineral, the vendee might unite the possession existing before the severance with immediate and continuous possession of the mineral after the severance, and so make out title to the mineral under the statute of limitations; but there must be an appropriate possession of the mineral, as the statute could not be satisfied merely by the vendor's possession of the surface.

Northcut *v.* Church (Tennessee), 188 Southwestern, 220, p. 223, August, 1916.

COAL AND COAL LANDS.

ENTRY OF COAL LANDS BY CORPORATION—TAKING BENEFIT OF STATUTE.

For a corporation to take the benefit of the coal-land laws within the meaning of section 2350 (U. S. Rev. Stat.), it must either file an

association claim itself or it shall directly cause such claim to be filed by others for its benefit. A coal company that obtains its title not as a locator but as a purchaser with guilty knowledge both actual and presumed, of fraud practiced by its grantor, can not properly be said to have "taken the benefit of the act," which requires that title shall be obtained either directly or indirectly by location.

Northern Colorado Coal Co. *v.* United States, 234 Federal, 34, p. 39.

COAL LOCATIONS—CANCELLATION OF PATENT.

When the Government seeks to set aside a patent to coal lands for fraud the respect due to such instruments and the stability of titles emanating from the Government require the case to be established by clear and convincing proof. All the Government is required to do is to show that the patent was obtained by fraud and when it shows this it is entitled to a cancellation of the patent. If the defendant can show that he is a bona fide holder and acquired the title to the land as a good faith purchaser, then he must prevail. But such a defense is an affirmative one and the burden of proving it rests upon the purchaser to show that he acquired the title for a valuable consideration and without notice of the fraud perpetrated upon the Government.

Northern Colorado Coal Co. v. United States, 234 Federal, 34, p. 36.
Hill *v.* United States, 234 Federal, 39, p. 40.

BONA FIDE PURCHASER.

A coal company took the assignment of a bond for a deed for a large tract of coal lands. At the time of the assignment of the bond the lands were a part of the public domain of which the coal company had actual knowledge and the officers of the company were intimately familiar with the lands. The corporation knew that the land was coal land and that title could probably be obtained for it only in accordance with the coal-land laws. Whether the coal company would ever get title to the property would depend upon the making of entries by independent entrymen or the willingness of such entrymen to part with their title after they had obtained it from the Government. Under such circumstances the court must infer that the bond for the deed contemplated that entry should be made for benefit of the obligors in the bond and be at all times subject to their control. Upon such inference and interpretation the bond was an illegal contract because of its actual and probable tendency to induce a violation of the law; and by acquiring the bond the coal company became a party to its illegal purpose. The coal company under such circumstances does not stand in the position of a bona fide purchaser.

Northern Colorado Coal Co. *v.* United States, 234 Federal, 34, p. 36.

AGREEMENT TO OBTAIN LEASE—LIABILITY FOR EXPENSES.

Certain persons entered into an agreement that they would at their joint expense prospect for coal and other minerals and obtain from the United States a lease of lands in the Indian reservation for any coal and minerals found. One of the party to the agreement, at the instance of the others, proceeded to acquire a lease of lands as contemplated. In acquiring the lease and obtaining possession of the land, it was necessary for the person acting as agent for the others to incur expenses, including attorney's fees for the services of attorneys in bringing injunction suits to perfect their rights and to prevent the Indian agent from excluding the parties from the reservation and depriving them of the benefits of the leases. Under the circumstances the parties are each liable to pay their proportionate share of the expenses and fees of counsel, though the agreement did not contemplate the hiring of counsel. The parties to the agreement can not escape liability on the ground that the expenditures were of no benefit to them.

Broatch *v.* Boysen, 236 Federal, 516.

AGREEMENT TO PROSPECT AND LEASE—LIABILITY FOR EXPENSES.

Certain persons entered into an agreement to prospect for coal and other minerals and to obtain leases from the United States Government for the lands in which any coal or mineral should be discovered. One of the contracting parties was selected as an agent to do the prospecting and to obtain the necessary leases. The agent so selected entered upon the duty of prospecting, discovered coal, obtained the necessary leases in his own name and expended large sums in opening a mine. He thereupon organized a corporation and transferred the leases and all the property acquired by him to the corporation. Parties to the agreement can not sue either the acting agent or the mining corporation organized by him for their share of the property without paying to the acting agent or to the corporation for him their proportionate part of the expenses incurred by him and by the corporation after its organization, although such expenditures included large sums paid to attorneys for services in injunctions and other suits necessary to protect the title and possession of the property.

Broatch *v.* Boysen, 236 Federal, 516, p. 519.

CONVEYANCE IN EFFECT A LEASE—LIABILITY OF ASSIGNEE.

An assignee of an instrument conveying oil and gas rights in certain described lands, that more nearly and largely bears the characteristics of a lease and that should be construed as a lease, is, before

a breach of its covenant, liable upon the covenants to pay rent, as such a covenant is one that runs with the land and becomes binding upon the assignee, even without an express assumption of the obligations; to the extent that the assignee is liable for rents accruing during the period in which he holds title.

Pierce Fordyce Oil Association *v.* Woodrum (Texas Civil Appeals), 188 Southwestern, 245, p. 251, June, 1916.

DOWER IN UNOPENED MINES.

There is no dower in unopened mines. A doweress has no right to mine coal from unopened mines. A sale for commercial use of coal so mined is an act of waste and lessens the estate of the remainderman and for this reason is not permissible. Where mines are already opened on the lands assigned as dower, a widow has the right to operate the same and receive the proceeds thereof, but she can not commit waste upon the land and the subsequent opening of coal mines thereon means waste.

Daniels *v.* Charles (Kentucky), 189 Southwestern, 192, p. 194, November, 1916.

WITHDRAWAL—MINERAL CHARACTER OF LAND.

An examination of land by proper authority and a report of its mineral character and the consequent withdrawal based on such report by the Executive establish prima facie its mineral character. A person seeking to have the land classified as nonmineral, after such withdrawal, and after its mineral character is so prima facie established, has the burden of proof to show the nonmineral character of the land, otherwise its prima facie character as mineral must stand established.

Hildreath, In re, 45 Land Decisions, 363, p. 365.

OIL AND OIL LANDS.

CONSTRUCTION—COVENANT RUNNING WITH LAND.

An instrument conveying the oil and gas under certain land but reserving title to one-eighth of the oil and gas is a covenant running with the land. But on noncompliance by the grantee or his assignee with the terms of the conveyance requiring the grantee to drill within a specified time, the grantor can not recover from the grantee or the assignee a su mof money which such assignee had not obligated himself to pay.

Pierce Fordyce Oil Association *v.* Woodrum (Texas Civil Appeals), 188 Southwestern, 245, p. 248, June, 1916.

WITHDRAWAL ORDER—EFFECT ON OIL LOCATIONS.

It was not the intention of the President acting for and on behalf of his principal, the United States Government, to except from the operation of the withdrawal order all claims or locations that might then be subsisting upon lands included within the order. Special pains were taken to indicate that the intention of the Executive was that only valid locations or claims were to be excepted from the general operation of the withdrawal order. The effect of the withdrawal order depends upon what is meant by a valid location or claim. Under the mining laws the locator has no vested right as against the Government until he makes a discovery of oil upon his claim. The posting or recording of his oil placer claim gives him no rights as against the Government until by discovery of oil it is made apparent that the land is in truth and in fact mineral land and subject to location under the mining law. The initiation of his claim by posting of notices protects him against third persons so long as he remains in possession and with due diligence prosecutes his claim toward a discovery. Although this gives him no vested rights against the Government yet he has rights which ought to be by all parties respected. All locators who are thus conducting themselves at the time of the withdrawal order had their rights respected by the exception contained therein. If on the date of the withdrawal order any locator was then on any withdrawn lands and was with "due diligence" prosecuting his work toward a discovery of oil, he was not affected by the order, and had a valid location and could proceed to enter or proceed to a discovery and thereby perfect his right to the mineral claim. But a locator not in possession or who was not with "due diligence" prosecuting his work toward a discovery, was not protected by the order. A person or locator deeming the withdrawal order entirely invalid can not after its date either begin or resume operations looking to the discovery of oil upon his claim, for the reason that the land by reason of the order was no longer open to entry or claim and as between him and the Government any subsequent effort of his could not divest the Government of his title.

United States *v.* McCutchen, 234 Federal, 702, p. 709.

PRESIDENT'S WITHDRAWAL ORDER—SUBSEQUENT LEGISLATION.

The President's withdrawal order of September, 1909, withdrawing certain oil lands from all forms of location or settlement was not in anywise affected by the act of June 25, 1910 (36 Stat., 847). The statute in effect affords the same protection that does the withdrawal order and is tantamount to a declaration on the part of Congress to the effect that one who claims the benefit of a location initiated prior

to the promulgation of the withdrawal order, but having made no discovery until after the date of the order, must have been, at the date of the withdrawal order, in diligent prosecution of the work leading to a discovery of oil and must continue in such diligent prosecution until a discovery is made.

United States *v.* McCutchen, 234 Federal, 702, p. 712.

TRESPASS—INJUNCTION TO PREVENT WASTE OF OIL.

The United States Government in an action against an alleged trespasser to prevent the extraction and waste of oil and for damages for oil wrongfully taken, where the legal title of the Government is undisputed, will not be denied the appointment of a receiver merely because it is out of possession where the very substance of the property, the oil, is being wrongfully depleted and the mere lapse of time would deprive the Government of its valuable and most substantial rights in their entirety, and a court of equity may appoint a receiver that complete justice may be done as between the Government on the one hand and the alleged trespasser on the other; and under the circumstances an injunction in restraint of waste should be awarded.

United States *v.* McCutchen, 234 Federal, 702, p. 415.

RIGHT OF POSSESSION—INJUNCTION.

The owner of an oil refinery in actual possession of a tract of land, claiming title thereto, is entitled to an injunction to restrain a third person from taking forcible possession until the title to the property is determined by proper legal procedure.

Burnett *v.* Sapulpa Refining Co. (Oklahoma), 159 Pacific, 360, p. 361, July, 1916.

DEED FRAUDULENTLY OBTAINED FROM INDIAN.

Where two separate deeds at different times were executed by an Indian to certain lands in the Creek Nation they should be construed together. The first deed being void under section 19 of the act of Congress, April 26, 1906 (34 Stat., 144), not only in that for the making of which an agreement was entered into before the removal of restrictions upon the conveyance of Indian lands, but in that a part of the consideration of the first entered into the consideration for the second deed, the taint of illegality in the first deed tainted the second and made both void. Both deeds being void, the subsequent purchaser of the land took no title.

Carter *v.* Prairie Oil & Gas Co. (Oklahoma), 160 Pacific, 319, p. 324, October, 1916.

APPLICATION FOR CLASSIFICATION.

Where an application is made to the Commissioner of the General Land Office for classification of land as nonoil, the commissioner may in his discretion refer the application to the Geological Survey, and he may accept the report of the Geological Survey and base his refusal to so classify the land on the evidence furnished him by the Geological Survey; and this does not make the Commissioner of the General Land Office subject to a charge or criticism that he failed, refused, and neglected to consider and pass upon the application for classification.

State of California, In re, 45 Land Decisions, 170, p. 171.

INTEREST CONVEYED—RIGHTS OF GRANTEE.

A conveyance of an interest in all the oil and gas and other minerals in a certain described tract of land conveys no title to any specific oil or gas, but carries with it the right to make use of the surface of the land for the reduction to possession of the oil and gas that may be found. This right to the oil or gas that may be found is alone conveyed in such case, as it is the only right, with respect to these fugitive products, that the owner himself can be said to possess. This right, however, he does possess, as it is the right of use and enjoyment and hence a constituent of his title to the land, and so possessing he may dispose of it.

Hanby *v.* Texas Co., 140 Louisiana, 72 Southern, 933, p. 934, November, 1916.

CONVEYANCE—TITLE NOT AFFECTED BY PAROL.

A conveyance of all the oil, gas, and other minerals carries with it the right to explore the land in search of such minerals and is a right in the land, and hence an immovable, by classification it follows that the title thereto can not be destroyed and another title established by parol evidence.

Hanby *v.* Texas Co., 140 Louisiana, 72 Southern, 933, p. 935, November, 1916.

PUBLIC LANDS.

VALIDITY OF WITHDRAWAL ORDER.

The presidential order of September 27, 1909, temporarily withdrawing from all forms of location and settlement, certain specified public lands is a valid exercise of power and withdrew all lands therein specified or described from public settlement and from all forms of mineral location as well.

United States *v.* McCutchen, 234 Federal, 702, p. 704.
United States *v.* Midwest Oil Co., 236 Federal, 459.

PUBLIC LANDS—CANCELLATION OF PATENT.

When the Government seeks to set aside a patent to coal lands for fraud the respect due to such instruments and the stability of titles emanating from the Government require the case to be established by clear and convincing proof. All the Government is required to do is to show that the patent was obtained by a fraud, and when it shows this it is entitled to a cancellation of the patent. If the defendant can show that he is a bona fide holder and acquired the title to the land as a good faith purchaser then he must prevail. But such a defense is an affirmative one and the burden of proving it rests upon the purchaser to show that he acquired the title for a valuable consideration and without notice of the fraud perpetrated upon the Government.

Northern Colorado Coal Co. *v.* United States, 234 Federal, 34, p. 36.
Hill *v.* United States, 234 Federal, 39, p. 40.

OCCUPATION AND POSSESSION.

An oil company by its managing officers entered into a verbal lease with the locator of certain oil lands by which the company leased the lands for oil operations; the managing superintendent of the oil company entered upon the lands and placed in care thereof a caretaker who remained on the land as an employee of the oil company as such caretaker; within 20 days from the date of the lease the field superintendent ordered lumber and material owned by the company and suitable for developing the land for oil to be shipped to the railroad station nearest the lands, and at the same time an agent or employee of the company brought to the land tent equipment for the accommodation of the workmen, which was immediately put up; at the same time the oil company entered into a verbal contract with a well driller to drill wells on the land and to proceed at once, and within five days drilling tools were shipped to the land and from that time on active operations were continued. Such acts are sufficient to constitute the oil company an occupant and in possession of the land within the act of Congress of June 25, 1910 (36 Stat., 847).

United States *v.* Grass Creek Oil & Gas Co., 236 Federal, 481, p. 485.

OIL LANDS—DILIGENT PROSECUTION.

A citizen of the United States, who in good faith enters upon public land for the purpose of discovering oil or gas and takes possession of the land by placing a caretaker thereon, while he is taking proper steps to obtain material necessary for the work of con-

structing camps, enters into contracts for the drilling of wells, acting as expeditiously as possible in erecting a camp and preparing for the drilling, expends money and enters into contracts whereby he becomes liable for sums of money to prosecute work resulting from the discovery of oil or gas, and as soon as it is possible in the exercise of proper diligence, begins the work of drilling and continues it diligently and expeditiously until oil is discovered in commercial quantities, is within the protection of the proviso of the act of Congress, known as the Pickett Act, passed June 25, 1910 (36 Stat., 847), as against the withdrawal order made by the President on May 6, 1914.

United States *v.* Grass Creek Oil & Gas Co., 236 Federal, 481, p. 487.

RAILROAD GRANT—MINERAL CHARACTER OF LAND.

The chief purpose of the act of February 26, 1895 (28 Stat., 648), was to determine speedily and finally what lands within the limit of the grant to the Northern Pacific Railroad Company were excepted from the operation of the grant by reason of their mineral character. The proposed mineral classification was only for the purpose of facilitating the administration of the railway company's grant and in no way affected the real character of the land or barred the question by anyone else than the railway company. The holder of a soldier's additional right may locate any unreserved nonmineral tract if it is satisfactorily shown that the land is in fact nonmineral and subject to such locations.

Kimpton, In re, 45 Land Decisions, 110, p. 112.

MINING TERMS.

COMPANY MAN.

A "company man," as a mining term, means an employee who, when not actively engaged in his regular duties, is subject to the call of the foreman for any general work about the mine. This includes the cleaning up and clearing of the slopes and passages, whenever they become obstructed by the falling of coal or otherwise.

Hammett *v.* Victoria American Fuel Co., 236 Federal, 526, p. 527.

MINING CORPORATIONS.

RIGHT OF INDIVIDUAL TO TEST CORPORATE AUTHORITY.

The act of June 19, 1871 (Pennsylvania Laws, 360), merely gives a private citizen the right to contest the right or authority of a corporation to do certain things injurious to private rights and to decide whether a franchise to do the particular act has been conferred upon the corporation. But under the provisions of the act the inquiry is limited to the question as to whether there was a grant to do the thing complained of, and if so the court is without authority to interfere. But this statute does not authorize an individual property owner, by way of injunction, to seek redress against a coal mining corporation to enjoin it from operating its plant and colliery to the injury of his property and to the inconvenience of himself.

Alexander *v.* Wilkes-Barre Anthracite Coal Co. (Pennsylvania), 98 Atlantic, 794, p. 795, May, 1916.

PRINCIPAL PLACE OF BUSINESS.

The principal place of business of a mining corporation within the meaning of the bankrupt act is in the State and at the place where its mines are located and its business transacted. A coal corporation owning over 15,000 acres in a single county, with 10 mines in operation, producing therefrom over 600,000 tons of coal per year; employing more than 1,000 men; operating four commissaries with sales averaging over $300,000 per year, and transacting its business in connection with its mining operations in the county where the coal mines were situated, must be held to have its principal place of business in such county rather than in three rooms in the twelfth story of a building in a city in a different State occupied by the president, secretary and treasurer, and the sales manager of the corporation.

Roszell *v.* Continental Coal Corporation, 235 Federal, 343, p. 354.

LIABILITY OF STOCKHOLDER FOR DEBTS OF CORPORATION.

Under the laws of California every stockholder of a mining corporation is individually liable for such portion of its debts and lia-

bilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock of the shares of the corporation. Where a corporation is formed in some State or county other than California, for the purpose of doing business in that State, the stockholders are, so far as concerns business transacted in California, liable in accordance with the California statutes.

Provident Gold Mining Co. *v.* Haynes (California), 159 Pacific, 155, p. 156, July, 1916.

DISSOLUTION—DISPOSITION OF ASSETS.

The statute of Washington authorizes the secretary of state to suppress the name and dissolve a corporation on its failure to pay the required license fee. The statute also authorizes a stockholders' meeting for the purpose of disposing of the assets of the corporation; but the statute does not restrict the stockholders to proceedings for a drastic sale of assets and they may close the company's affairs in other ways. Complaining minority shareholders can not allege a violation of the statute but must proceed by way of receivership for some other violation of the general corporation law.

Grant *v.* Monterey Gold Mining Co. (Washington), 159 Pacific, 895, August, 1916.

DISSOLUTION—RIGHT OF MINORITY STOCKHOLDERS.

A minority stockholder on a dissolution and reorganization of the corporation can not be compelled to accept shares in the reorganized company, but he may agree to do so, and after an agreement to do so and a delay of two years, such a stockholder is without legal remedy.

Grant *v.* Monterey Gold Mining Co. (Washington), 159 Pacific, 895, August, 1916.

POWER TO ISSUE MERCHANDISE COUPON BOOKS.

Coal-mining companies in Kentucky are required by the statute to pay their employees and miners their wages in money and are prohibited from issuing and delivering to miners or employees merchandise coupon books in payment of wages due.

Pond Creek Coal Co. *v.* Lester (Kentucky), 188 Southwestern, 907, p. 909, October, 1916.

COUPON BOOKS NOT NEGOTIABLE.

Coupon books issued by a coal company payable or redeemable in merchandise at the stores of the company are not negotiable instruments under law.

Pond Creek Coal Co. *v.* Lester (Kentucky), 188 Southwestern, 907, p. 908, October, 1916.

PAYMENT OF WAGES—MERCHANDISE COUPON BOOKS—REDEMPTION.

Mining corporations in Kentucky are required to pay the wages of their miners and employees in current money and are prohibited from issuing merchandise coupon books in payment of wages. But such corporations are not prohibited from issuing such coupon merchandise books to their employees and miners before they have either earned their wages or before the wages are due and payable. The miner or employee receiving such coupon books before his wages become due and payable can, when the wages are due and payable, demand and receive in cash the amount due him, and the corporation issuing the coupons can not, under the constitution and the statute, refuse to redeem such coupons in cash, though they may be payable in merchandise. The miner or employee having the right to be paid in cash for such coupons may sell and assign such right to a third person, and the transferee, as holder, is entitled to demand and receive in lawful money of the United States the money due the assignor, although the coupon expressly states that it is not transferable. On refusal of the mining corporation to redeem any such coupons, the assignee or holder may maintain a suit against the mining corporation and recover the amount due on the coupon, but he is required to make the assignor a party defendant to such suit.

Pond Creek Coal Co. *v.* Lester (Kentucky), 188 Southwestern, 907, p. 910, October, 1916.

AUTHORITY OF OFFICERS TO ASSIGN ACCOUNTS.

The president and general manager of a trading corporation engaged in the business of mining and selling coal have, in the absence of any limitations on their authority, full power and authority to assign ordinary open accounts to a creditor of the corporation.

Kentucky Consumers Oil Co. *v.* Continental Fuel Co. (Kentucky), 188 Southwestern, 855, p. 857, October, 1916.

PAYMENT TO ONE CREDITOR—PREFERENCE.

The assignment of an open account by an insolvent coal-mining corporation to a creditor in payment of interest due on a mortgage covering all the property of the coal company, including the coal in its natural state, is not fraudulent, though made after other creditors had obtained judgments against the mining company and returns: "No property found."

Kentucky Consumers Oil Co. *v.* Continental Fuel Co. (Kentucky), 188 Southwestern, 855, p. 857, October, 1916.

POWER OF OFFICERS TO DISPOSE OF ALL ITS PROPERTY.

The managing officers of a corporation engaged in the business of mining and selling coal can not, in the absence of authority conferred by the directors, sell and dispose of all the assets of the company or make a general assignment for the benefit of the creditors.

Kentucky Consumers Oil Co. *v.* Continental Fuel Co. (Kentucky), 188 Southwestern, 855, p. 857, October, 1916.

AUTHORITY OF PRESIDENT OF MINING COMPANY.

In an action by a person against a mining corporation to recover for services in making a sale of the corporation's mine there can be no recovery where the evidence shows that plaintiff was employed by the president of the mining company, or where there is no evidence to show that the company's president was accustomed to manage its affairs, or that the presidents of mining corporations usually have authority to manage the property of the companies, and where it in no way appeared either that the corporation or its stockholders held the president out as having authority to employ the plaintiff to sell its mine or that the corporation ever ratified the contract of employment of the plaintiff.

Huey *v.* West Ossipee Mining Co. (New Hampshire), 99 Atlantic, p. 93, October, 1916.

RATIFICATION—KNOWLEDGE OF ACTS.

The fact that a mining corporation, by its board of directors or otherwise, authorized the president of the company to sell its mine to a certain-named mineral company for a fixed price does not tend to prove that the company or its board of directors knew that the president had employed a particular person as agent to make the sale. If the corporation or its board of directors did not know of any contract between the president and such third person to make the sale of the mine, then in the absence of such knowledge there could be no ratification of the employment.

Huey *v.* West Ossipee Mining Co. (New Hampshire), 99 Atlantic, p. 93, October, 1916.

EMINENT DOMAIN—RIGHT OF WAY.

CONDEMNATION PROCEEDINGS—OWNERSHIP OF LAND.

In condemnation proceedings by one coal company against another to acquire a right of way for a tramroad over ground alleged to be owned by the condemnee, the condemnee can not, after alleging title in its answer and insisting upon such answer, demand a dismissal or determination of the proceeding because the condemnor averred in its reply to the answer that it had acquired and held title to the land sought to be condemned. If the condemnee desires to admit title in the condemnor it can do so and be relieved with costs; but it can not claim title in itself, admit title in the condemnor, and avoid a contest of the proceeding. In such a proceeding the condemnor may acquire title subsequent to the institution of the condemnation proceedings, and may then plead such fact.

Ketchum Coal Co. *v.* District Court (Utah), 159 Pacific, 737, p. 743, August, 1916.

See also Ketchum Coal Co. *v.* Christensen (Utah), 150 Pacific, 541, July, 1916.

MINING CLAIMS.

NATURE AND GENERAL FEATURES.

LOCATION AND RECORD—DISTINCTION.

The Federal and most State statutes distinguish between a mining location and its record. The statutory object of location and record is to protect and reward discoverers of mines. Discovery with the intent to claim is the principal thing and vests an estate which is an immediate fixed right of present and exclusive enjoyment of the discoverer. The record is incidentally machinery to secure to the discoverer his reward and to give notice to others. The purpose of all recordation acts is notice to protect others against secret equities. Where a record is not necessary to create the estate the statute providing for recording is but a direction to do certain things and does not create conditions subsequent; and if the statute provides no forfeiture for failure to record then the estate is not divested because of such failure. The recording of mining locations can not be a condition precedent, as the estate arises before recordation is to be performed.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 554.

MINERAL CHARACTER OF LAND.

DIATOMACEOUS EARTH.

Diatomaceous earth, called also infusorial earth and kieselguhr, is a light earthy material which from some source is loose and powdery and from others is more or less firmly coherent. It may resemble clay or chalk in physical properties, but can be distinguished at once from chalk by the fact that it does not effervesce when treated with acids. It is generally white, or gray in color, but may be brown or even black when mixed with much organic matter. It is made up of remains of minute aquatic plants and is composed chemically of hydrous silica. Owing to its porosity it has great absorptive powers and high insulating efficiency and is an effective filter. Its hardness, the minute size, and the shape of its grains make it an excellent metal polishing agent. Diatomaceous earth is undoubtedly a mineral substance and if found in such quantities and qualities as to render

lands containing such deposits valuable, it constitutes a valuable deposit under the mining laws.

Central Pacific Railway Co., In re, 45 Land Decisions, 223, p. 225.

LOCATION NOTICE AND CERTIFICATE.

VERIFICATION—SUFFICIENCY.

A verification to a declaratory statement is defective where it merely recites that the locators were citizens and that the instrument was a copy of the original notice of location posted on the claim.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 554.

LOCATION NOTICE—RECORD AS EVIDENCE.

The statute of Montana now provides that the record of a certificate of location is for constructive notice and a certified copy thereof is prima facie evidence of all facts properly recited in the certificate of location; and no defect is material save in favor of subsequent locators "in good faith and without notice."

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 554.

FAILURE TO RECORD—RIGHTS OF ASSIGNEE.

An assignee of part of the premises of a mining claim to which certain conditions attach can take no advantage of the breach of such conditions.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 555.

FAILURE TO RECORD NO GROUND OF FORFEITURE.

Recording acts that expressly provide forfeiture for failure to comply with them do so in favor of subsequent bona fide claimants only. Forfeitures are odious and not to be implied prior to patent entry of the claims in controversy. The Montana statute provides that all ambiguous statutes shall be construed in favor of natural rights, and it would not be too far stretched to apply it to the statute directing recording of mining claims.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 555.

KNOWLEDGE WITHOUT RECORD.

A person with knowledge of the existence of a mining location can take no advantage of the locator's failure to post two notices required by local rules where he had posted but one. The rule did

not provide for forfeiture for the failure to properly record the notice; but a person with such knowledge had all the information the notice was designed to give and to hold that the failure to post the second notice would work a forfeiture would permit the rule to work an injustice and subvert the very purpose for which it was enacted.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 556.

STATE STATUTES AND MINERS' RULES.

The failure of a locator of a mining claim to comply with local statutes or miners' rules that do not prescribe forfeiture for non-compliance is immaterial as to persons having knowledge of the actual location.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 556.

DESCRIPTION OF CLAIM.

SURVEY—MEANDER LINES.

In the description of a mining claim a meander line is a line run in the survey of the claim bordering on a stream or other body of water, not as a boundary of the tract surveyed, but for the purpose of defining the sinuosities of the bank or shore of the water, and as a means of ascertaining the quantity of land within the surveyed area. In preparing official plats such a line is represented as a border line of the water and shows ordinarily to a demonstration that the water course and not the meander line is the boundary.

Alaska United Gold Mining Co. *v.* Cincinnati Alaska Mining Co., 45 Land Decisions, 330, p. 340.

MEANDER LINES—EFFECT AND AREA.

Where the doctrine of meander lines is applied to mining claims patented under the lode mining and mill site laws and the seaward lines of patented claims are shown to be meander lines, the patent thereto must be construed as embracing and including the area, if any such there be, lying between the meander line of such claims as run and the line of mean high tide as it existed at the dates of the survey and patents.

Alaska United Gold Mining Co. *v.* Cincinnati Alaska Mining Co., 45 Land Decisions, 330, p. 340.

PURPOSE OF MEANDER LINES.

The purpose of running meander lines in connection with the survey of public lands of the United States does not rest upon a specific statutory provision but is one of expediency. The difficulty of following the edge or margin of projections and all the various sinuosities of the water line is the occasion and cause of running the meander line which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in lots bordering on a lake or stream. This rule is applied to lode mining claims abutting upon a body of water.

Alaska United Gold Mining Co. *v.* Cincinnati Alaska Mining Co., 45 Land Decisions, 330, p. 341.

SHORE AND MEANDER LINES.

The fact that a meander line as run by the surveyor of the mining claim does not precisely coincide with the shore line of the body of water upon which the claim abuts, and that no artificial monuments are established on such water line does not itself militate against the nonestablishment of such artificial monuments. From this follows the rule that in the course of an official patent survey of the mining claim abutting upon a navigable body of water when a meander line which follows as nearly as practicable the shore line of such water has been run, such shore line and not the meander line must be taken as the boundary of the claim when patented according to the plat and field notes of the survey of the claim.

Alaska United Gold Mining Co. *v.* Cincinnati Alaska Mining Co., 45 Land Decisions, 330, p. 343.

DESCRIPTION—REFERENCE TO MINERAL LOTS BY NUMBER.

Patents for mining claims by reciting mineral lot numbers of respective claims make a sufficient reference to the plats and field notes of the survey of such claims to render them admissible as evidence for the purpose of showing that certain lines of the claims described were in fact meander lines.

Alaska United Gold Mining Co. *v.* Cincinnati Alaska Mining Co., 45 Land Decisions, 330, p. 339.

DISCOVERY.

WITHDRAWAL OF OIL LANDS BEFORE DISCOVERY.

If discoveries of oil were made subsequent to the withdrawal order of the President, on oil locations initiated prior thereto, and if at the time of making such order the locators were in occupation of the

location and were at the time diligently engaged in the prosecution of the work looking to a discovery of oil, they are protected by the express terms of the withdrawal order. But if they were not so engaged in diligently endeavoring to effect a discovery of oil then their rights were neither greater nor different from the rights of one who might have entered on the withdrawn lands subsequent to the date of the withdrawal order.

United States *v.* McCutchen, 234 Federal, 702, p. 711.

WITHDRAWAL OF OIL LANDS—DILIGENT PROSECUTION FOR DISCOVERY.

A corporation initiated an oil location upon certain public lands prior to the President's withdrawal order of September 27, 1909, but had made no discovery before that date. On August 5, 1909, it discontinued and ceased the work looking to a discovery of oil because all of its available funds were exhausted. A committee of its stockholders authorized to conduct the business, discharged the employees engaged in drilling, placed the property in charge of a keeper, under a salary, and afterwards procured a person to move on the property, rent free, to hold it for the locating corporation. Under such circumstances the corporation is not entitled to hold the location, as it was not engaged in the diligent prosecution of work contemplated in the order and its acts and conduct were insufficient to protect it, having failed to make a discovery of oil before the date of the withdrawal order.

United States *v.* McCutchen, 234 Federal, 702, p. 713.

EXTRALATERAL RIGHTS.

BURDEN OF PROOF.

In a controversy between adjoining claim owners over the ownership of certain ore bodies where the burden of proof, either as the result of an admission or as shown by the proof, is upon the defendant to show that his location is the older and that the vein apexing in his claim united with the vein apexing in the plaintiff's claim, this burden can not be sustained by leaving the issue in doubt or balance. When the defendant admits that the ore bodies in dispute were found in the dip of the vein apexing in the plaintiff's claim and fails to prove what he alleges in avoidance of the plaintiff's right to the ore bodies, he has not sustained the burden thus assumed.

Clark-Montana Reaity Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 559.

ADMISSION AND BURDEN OF PROOF.

In a contest between adjoining mining claim owners as to the title of certain ore bodies, it was admitted by the defendant, and shown by the evidence, that the apex of a certain vein crossed the common

side line of the two claims and from its apex in the plaintiff's claim it extended on its dip under the defendant's claim, and that the ore body in dispute was in such vein on its dip. Such admission is sufficient to overcome the common law presumption that the defendant owns that part of the ore body under his claim and imposes upon him the burden of proving by preponderance of the evidence that his location is the older and that the vein claimed by him and having its apex in his claim unites with the vein apexing in the plaintiff's claim above any part of the ore body in dispute.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 556.

OWNERSHIP OF ORE BODIES—ADMISSIONS.

In an action between adjoining mining locators to determine the ownership of certain ore bodies the defendant claimed the ore bodies on the ground that a vein apexing in his claim united with the vein apexing in the plaintiff's claim. The plaintiff denied that the veins united, but alleged that they crossed and admitted the ownership of the ore bodies in the defendant by reason of such fact. The fact that the defendant failed to prove the union of the veins as alleged and the ore bodies as claimed will not defeat his action, and ownership must be awarded him on the admission of the plaintiff.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 571.

END LINES.

There can be but one set of end lines to a mining location, and if the located end lines fix extralateral rights upon one vein then they fix them upon all veins.

Clark-Montana Realty Co. *v.* Butter & Superior Copper Co., 233 Federal, 547, p. 571.

CERTAINTY OF DECREE.

A decree in a suit in equity seeking to quiet the relative titles of the contending parties to veins and ore bodies to the effect that each party be entitled to so much of the veins as lie within the determined end line planes projected where the apices cross the common side line is not indefinite and uncertain, as it can be made certain by following the apices to the crossing. A decree may quiet title on a vein but partly developed on presumptions, from end line to end line, which later may be found to cross side lines and between the same parties require new litigation to identify and fix the point of crossing. In molding a decree under such circumstances the inherent nature of the property involved must be kept in mind, especially where the suit is not confined to specific ore bodies, but where it involves every part of a vein and every vein apexing in a certain named location,

unknown, as well as known, that may dip beneath the adjoining location.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 578.

ASSESSMENT WORK.

FAILURE TO PERFORM—SUFFICIENT EXCUSE.

A third person can not by forcibly preventing the performance of assessment work initiate rights to defeat the right of the original locator or rightful owner; nor can he be heard to say, after excluding the rightful owner from the principal part of the claim, that there was sufficient room or place on other parts of the claim from which he did not exclude the rightful owner.

Ames *v.* Sullivan, 235 Federal, 880, p. 882.

See also Erhardt *v.* Boaro, 113 United States, 527; Mills *v.* Fletcher, 100 California, 142, (34 Pacific, 637).

FORFEITURE.

STATE STATUTES AND MINERS' REGULATIONS.

The State statutes are of no more force and effect than miners' rules and both are authorized by the Federal statute. The prevailing rule is that if the recordation law does not provide forfeiture for failure to record the location is valid though not recorded and can not be forfeited by a failure to record.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 555.

EXPENDITURES AT RISK OF LOCATOR.

A corporation as the locator of an oil claim expended a large sum of money without making a discovery of oil and thereupon ceased operations prior to the date of the President's withdrawal order. After the withdrawal order, believing the same to be invalid, it again took possession of the claim, continued development at an additional expense and made a discovery of oil. The fact that the corporation expended a large amount of money in developing and making valuable the claim and land does not prevent the United States Government from declaring a forfeiture and holding the company as a trespasser. The corporation under such circumstances can not claim the benefit of either the provisions of the withdrawal order or of the act of Congress of June 25, 1910 (36 Stat., 847).

United States *v.* McCutcheon, 234 Federal, 702, p. 714.

POSSESSORY RIGHTS.

In an action over the title and possession of a mining claim the plaintiff claimed title under a mining location regularly made under

the United States mining laws, made by him September 11, 1911. The defendant claimed title from the Central Pacific Railroad Company, under a patent from the United States dated June 23, 1883, pursuant to a grant from the United States to the railroad company by act of Congress July 1, 1862, and the amendment of July 2, 1864 (12 Stat., 492; 13 Stat., 356). At the time the patent was issued to the railroad company the land involved was in possession of the plaintiff and was worked by him as a mining claim. Gold had been discovered and was being taken by him in paying quantities. In 1887 the plaintiff abandoned the claim and the same was never again worked as a mining claim and there was no further assertion that it constituted mineral land until the plaintiff again located the claim in 1911. The patent to the railroad company excepted all mineral land "should any such be found in the tracts aforesaid." The Land Department is a legally constituted tribunal to determine the question whether or not the land to be patented is or is not mineral within the meaning of the statute, and a patent issued in due form passes title, and a clause in a patent purporting to except mineral land found to be in the tract is void, as the land office and officers of the United States who prepare and issue patents have no authority to insert such exception. A patent so issued is a conclusive and official declaration that the land is agricultural and that all requirements have been complied with. A person claiming under a mining location made after the issuance of a patent and after a previous location was abandoned is not in privity with the United States so as to enable him to invoke the right to annul such a patent and he can not attack the patent on the ground of fraud or mistake. The patent under which the defendant claims is conclusive as to the character of the land; and the subsequent discovery of mineral and the location of the mining claim by the plaintiff give him no right or title to the mining claim as against the title of the defendant.

Vore *v.* Ephraim (California), 159 Pacific, 719, p. 720, August, 1916.
See Burke *v.* Southern Pacific Railroad Co., 234 United States, 669.

SALE AND TRANSFER.

EFFECT ON VEIN OF GRANTOR APEXING IN ANOTHER CLAIM.

A locator of a mining claim conveyed to another all of his right, title, and interest to an undivided one-quarter part of his lode-mining claim. Such a conveyance does not transfer to the grantee any title to a vein on its dip under the claim so conveyed where such vein had its apex in another and a different claim owned by the grantor.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 572.

PLACER CLAIMS.

LEGAL SUBDIVISION AS UNIT.

Since the adoption of the regulations of March 29, 1909, the 10-acre subdivision of placer claims must normally be in a square form. But where it is impossible for an applicant to comply with this requirement for the reason that the adjoining land which would necessarily have to be embraced in a location square in form has either passed out of the public domain or are embraced in adjoining mining claims. Where such conditions exist, the placer location, whether upon surveyed or unsurveyed land, will not be required to conform to the public-land survey, and the rectangular subdivision thereof, when such requirement would necessitate the placing the land thereof upon other prior-located claims or when a claim is surrounded by prior locations.

Harris, In re, 45 Land Decisions, 174, p. 175.

ADVERSE CLAIMS.

CONFLICTING APPLICATIONS—ADVERSE BY SENIOR APPLICANT.

The owner of a mining claim instituted proceedings in the Land Office for a patent for his claim. Subsequently another locator filed an application for patent for a part of the same claim. Thereupon the senior applicant filed an adverse claim to the junior application and within the statutory period instituted a suit on his adverse claim in the proper court. The filing of the adverse claim and the institution of the suit thereon by the senior applicant do not work a forfeiture or abandonment of such senior application. Such adverse claims and suit instituted thereon by the senior applicant is not an adverse claim and suit within the meaning of the United States mining statute, and does not therefore operate to stay proceedings on the senior application.

International Asbestos Mills & Power Co., In re, 45 Land Decisions, 158, p. 159.

APPLICATION OF STATUTE.

The concluding portion of section 2325 and section 2326 of the United States mining statute have reference to unperfected mining claims to areas subject to patent under the mining law, and not to tracts the legal title to which has at the date of the patent application passed out of the Government; it is only unentered public lands of the United States that may be patented under the mining law. These sections have no application where the question presented to the Land Office for determination is whether the area involved is public lands of the United States and as such susceptible for conveyance by United States patents.

Alaska United Gold Mining Co. *v.* Cincinnati-Alaska Mining Co., 45 Land Decisions, 330, p. 333.

PURPOSE OF ADVERSE PROCEEDINGS.

The purpose of the United States mining statute in providing for the filing of adverse claims in patent proceedings is that where there are two claimants to the same property, neither of whom has acquired a title from the Government, they shall bring their respective claims to the property, in the manner described, before a judicial tribunal in the neighborhood of the property and have their contesting claims determined, and the result of this judicial determination shall govern the action of the officials of the Land Department in determining to which of the claimants the patent shall be issued.

Alaska United Gold Mining Co. *v.* Cincinnati-Alaska Mining Co., 45 Land Decisions, 330, p. 333.

FAILURE TO BEGIN SUIT—WAIVER.

The failure of an adverse claimant seasonably to institute judicial proceedings against the application for a mineral patent and prosecute the same with reasonable diligence until final judgment is a waiver of his adverse claim.

International Asbestos Mills & Power Co., In re 45 Land Decisions, 158, p. 162.

PATENTS.

PATENT ON EX PARTE APPLICATION.

In proceedings for patent for a mining claim where an adverse claim is not filed and not tried and determined by a court of competent jurisdiction, the patent proceeding decides nothing except that the applicant is entitled to a patent for the surface area applied for. The land department does not determine or try priority. It has no jurisdiction to do so further than entry made and patent issued is a conclusive determination that to the surface area entered and patented the patentee has priority. Although the applicant is a subsequent locator, if the prior locator does not file an adverse claim and litigate it in the proper court patent shall issue to the applicant. But the fact that a prior locator abstains or refuses to litigate the conflict area claimed by a subsequent locator can not create a presumption to his prejudice in respect to the remainder of his claim. Whether he abandons the conflict because of fear of failure or pure indifference is immaterial.

Clark-Montana Realty Co. *v.* Buttee Superior Copper Co., 233 Federal, 547, p. 556.

EFFECT AND RIGHTS UNDER PATENT.

Locations of mining claims are of the surface, including veins. Where there is no conflict, if the United States does not avoid a

location for defective compliance with local rules, and issues patent, the patent vests all the extralateral rights appropriate to the veins within such surface and as of date of discovery, and a third person can not complain.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 556.

CONVEYANCE OF PART OF CLAIM—EFFECT.

An application for a patent for an entire mining claim can not be granted where it is shown by the abstract of title that the applicant as owner has conveyed by an absolute deed for a full and valuable consideration a part or a strip through or across the claim to a railroad company. The conveyance in this case is not a mere easement for a right of way but the entire right, title, and interest in and to the real estate.

Eyrad, In re, 45 Land Decisions, 212, p. 214.

EXCLUSION OF PARTS OF AREA.

A mineral claimant in an application for a patent is entitled to exclude any portion of the area included in a mining claim for any reason that may seem fit without affecting his right to the other portions of the area, if the excluded portion does not contain essential parts of the improvements relied upon to support the application or the discovery upon which the location is based.

Eyrad, In re, 45 Land Decisions, 212, p. 215.

PLATS AND FIELD NOTES FILED WITH APPLICATION—PURPOSE AND EFFECT.

Plats and field notes referred to in patents issued by the United States may be resorted to for the purpose of determining the limits of the area that passed under such patent. The plat, with all its notes, lines, descriptions, and landmarks, becomes as such a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out in the deed.

Alaska United Gold Mining Co. *v.* Cincinnati-Alaska Mining Co., 45 Land Decisions, 330, p. 336.

AREA IN PENDING APPLICATION—SUBSEQUENT APPLICATION.

The area included in a pending application for patent under the United States mining laws can not properly be included in a subsequent mineral application by another person.

International Asbestos Mills & Power Co., In re, 45 Land Decisions, 158, p. 161.

STATUTES RELATING TO MINING OPERATIONS.

CONSTRUCTION, VALIDITY, AND EFFECT.

POWER OF COAL CORPORATION TO ISSUE MERCHANDISE COUPON BOOKS.

The statute of Kentucky (Kentucky Stats., sec. 1350, 2738r), makes it a criminal offense for a mining corporation to issue merchandise coupon books to its miners and employees in payment of wages, but it is not a violation of the statute for such a corporation to issue merchandise coupon books at a time when the miner or employee had not then earned any wages or before payment for wages was due. It is, however, a violation of the statute for a corporation to fail to redeem the books if the wages for which they were issued were due on presentation by the miner or wage earner.

Pond Creek Coal Co. *v.* Lester (Kentucky), 188 Southwestern, 907, p. 909, October, 1916.

NEGLIGENCE OF OPERATOR COMBINED WITH NEGLIGENCE OF OTHERS.

The statute of Indiana (Acts of 1911, p. 145) provides that liability may be established against a coal-mine operator for injury to a miner resulting in whole or "in part" from the negligence of the operator. This provision can not be held to apply only in cases where the injury was occasioned by the negligence of the mine operator and that of the injured miner in order to make available a defense of contributory negligence. The negligence of the mine operator may concur with the negligence of some third person and an injury resulting only "in part" from the negligence of the mine operator, but this does not relieve the mine operator from liability.

Little Coal Co. *v.* O'Bryan (Indiana Appeals), 114 Northeastern, 96, p. 96, November, 1916.

DUTIES IMPOSED ON OPERATOR.

DUTY TO INSTRUCT INEXPERIENCED MINERS—FAILURE.

When a mine foreman occupies the incompatible position of statutory mine foreman and superintendent on behalf of the operator, with power to employ and assign miners to work in dangerous places and who employed and assigned an inexperienced miner, though an

adult, to work at a place that suddenly became dangerous and was known to the foreman to be dangerous, without instructing or warning the miner of the danger, the mine operator is liable in damages for injuries sustained by the miner, due to no fault on his part.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 724, September, 1916.

DUTY TO WARN.

Where there exist defects known to the mine operator and unknown to a miner, increasing the risk of the employment beyond its ordinary hazard, the mine operator is bound to disclose such defects to the miner; otherwise he will be liable as for negligence in case of an injury to the miner resulting from such unusual risks.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

CHANGED CONDITIONS—DUTY TO WARN.

Where the progress of the work of mining has brought about new or changed conditions, that would increase the perils of the miner unacquainted therewith, then the mine operator is bound to disclose such increased dangers to the miner, and for failure to do so he is guilty of actual negligence and liable in case of injury to the miner.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

FAILURE TO INSPECT AND FURNISH PROPS.

In an action by a miner against a coal-mine operator for damages for injuries caused by rock falling from the roof of the mine, a complaint is sufficient which alleges that the defendant was engaged in the business of mining coal, and employed more than 10 men; that complainant was employed and was engaged in operating a machine to undercut the coal, and was at the time of receiving the injuries complained of, operating such a machine in a certain room in the defendant's mine; that it was the duty of the defendant to furnish and make safe the place in which to work and to keep constantly on hand at his mine a sufficient supply of timber of suitable lengths to properly secure and make safe the room in which complainant was required to work; that it was the duty of the defendant by its mine boss to visit and examine each working place at least every alternate day and see that the same was secured by props and to keep on hand at the mine a sufficient supply of props, caps, and timber; that the defendant did not perform such duties but negligently failed and refused to furnish the necessary props, caps, and timber of proper lengths and negligently failed to visit and examine the mine and see

that it was properly secured and negligently allowed it to be without props and timbers for three days prior to complainant's injury, by reason of which the complainant was unable to prop and make safe the room where he was working; that by reason of such negligence and failure of the defendant the roof of the room where the complainant was working became weak and dangerous, which fact was known to the defendant, or might have been known by the exercise of reasonable care and diligence; that by reason of such weak and unsafe condition of the roof, the roof where the complainant was working suddenly gave way and caved in and fell upon him and caused the injuries complained of.

Vandalia Coal Co. *v.* Sheppard (Indiana Appeals), 113 Northeast, 767, p. 768, October, 1916.

VIOLATION OF STATUTORY DUTY.

PROXIMATE CAUSE OF INJURY.

In an action by the owner and occupant of a residence to enjoin a coal-mining company from operating its colliery, the complainant averred that the mining company violated the provisions of the mining laws of June 2, 1891 (Pennsylvania Laws, 176) by erecting its breaker within 200 feet of the mouth of the main hoisting shaft and by constructing its washery in too close proximity to its fan house and in not properly placing and erecting the boilers. The ground of injunction as alleged in the complainant's petition was the inconvenience and damage by smoke, noise, and dust caused by the proximity of the defendant's works to the complainant's residence, and the vibration of the machinery used in operating its plant. The purpose of the statute was to protect the community as well as those employed in mining, and the rights of the complainant are the same as those of every other member of the community if he suffers special injury by the defendant's violation of the mining laws. But it does not appear how compliance with the mining laws with respect to the location of buildings would in any way lessen the nuisance complained of. The violation of the mining laws, as alleged in the complainant's petition, is not the proximate cause of the injury complained of according to the allegations of the petition. By a compliance with the law on the part of the mining company it might have placed its washery and other structures as near or nearer the complainant's property as now located. It is made a crime, and a penalty is imposed on a mining company that violates the mining laws, but equity will not enforce a penalty or enjoin the commission of a crime at the instance of an individual where there is no special injury to private rights. The complainant, in order to entitle him to the injunction, must show a special damage to himself by

reason of the erection of the company's buildings and machinery within a distance of each other prohibited by the State mining laws. But proof that the only damage sustained by the complainant was due to the operation of the colliery in the particular neighborhood is insufficient to warrant the injunction where there was no evidence that the removing of the buildings or structures, so as to comply with the provisions of the mining law, would lessen or tend to prevent the injuries complained of.

Alexander *v.* Wilkes-Barre Anthracite Coal Co. (Pennsylvania), 98 Atlantic, 794, p. 795, May, 1916.

QUESTION OF FACT.

In an action by a miner against a mine operator for damages for injuries caused by the falling of rock from the roof, where the injured miner was experienced in the work of mining, the question as to whether the miner's working place became dangerous without the knowledge of the miner, or whether it was the duty of the mine operator to warn and instruct the miner of the danger, is one of fact for the jury to determine and can not be determined as a matter of law.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

VIOLATION—PROXIMATE CAUSE OF INJURY.

The failure of a mine operator to cause the mine to be properly examined by the mine boss and the failure to furnish props, caps, and timbers, as required by the statute, is the proximate cause of an injury to the miner caused by the falling of rock from the roof, where it sufficiently appears that the rock would not have fallen had the statute been complied with.

Vandalia Coal Co. *v.* Sheppard (Indiana Appeal), 113 Northeastern, 767, p. 768, October, 1916.

NEGLIGENCE OF MINE FOREMAN.

FOREMAN EMPLOYED AS SUPERINTENDENT.

The statute of West Virginia (Acts of 1907, sec. 8) requires the mine foreman of every coal mine to see that miners employed shall be instructed as to the particular danger incident to the work they undertake. When a statutory mine foreman is clothed by the owner with authority to employ and discharge miners and assign them to their places of work in the mine and he employs and assigns a miner to work in a dangerous place in the mine without apprising him of the danger and instructing him of the means of avoidance thereof,

and the miner is injured or killed as a result of such action, the operator is liable, notwithstanding the statute makes it the duty of the mine foreman to instruct the men working under them. This liability is upon the principle that such a mine foreman can not at one and the same time occupy the inconsistent position of statutory mine foreman and superintendent of the mine and superintendent of the operator in the employment and discharge of miners and assigning them to work in places of danger.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 723, p. 724, September, 1916.

DIRECTING MINER TO WORK IN DANGEROUS PLACE.

Where the foreman of a mine directs a miner to work in a certain room in the mine, of the condition of which the miner knows nothing, and pursuant to such directions the miner proceeds to the work and is injured by a fall from the roof, the foreman is presumed to know of the condition of the roof, and his negligence in not informing the miner of such conditions is the negligence of the mine operator.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 725, September, 1916.

FOREMAN'S FAILURE TO WARN.

The statute of West Virginia requires the mine foreman to see that the places of work are made reasonably safe and not to permit miners to work in places of danger. In so far as the performance of these duties is concerned, the negligence of the mine foreman, as such, is the negligence of a fellow servant. But where the owner or operator of the mine devolves upon the mine foreman also the duty to employ and discharge miners and to superintend the getting out of coal, a position incompatible with his statutory duties, notice to him of any defects in the mine rendering it dangerous is imputable to the mine operator; and if as such representative the mine foreman directs a miner to work without instructing or warning him of new or changed conditions in the mine, rendering the miner's working place particularly and unusually hazardous, the mine operator will be liable for his breach of duty to warn an inexperienced miner of such dangers.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 725, September, 1916.

NEGLIGENCE OF MINE BOSS—FAILURE TO INSPECT OR SUPPLY PROPS.

A complaint in an action by a miner against a mine operator for injuries caused by the falling of rock from the roof is sufficient where it avers the failure of the mine boss to inspect the complainant's

working place, as required by the statute, and where the mine boss failed to supply the necessary props, caps, and timbers with which to secure the roof of the mine at the complainant's working place. The discharge of this statutory duty is in no way dependent upon or modified by the ability, the diligence, or want of diligence of the miner in discovering or remedying the defect in the place where he is required to work, and which by the provisions of the statute the mine operator is bound to make safe in the manner and by the manner therein described.

Vandalia Coal Co. *v.* Sheppard (Indiana Appeal), 113 Northeastern, 767, p. 768, October, 1916.

EFFECT ON CONTRIBUTORY NEGLIGENCE.

MINER CONTINUING WORK IN DANGEROUS PLACE.

In an action by a miner against the mine operator for damages for injuries caused by the falling of rock from the roof the injured miner can not be charged with contributory negligence to defeat recovery where prior to the time of the injury he had no knowledge of the dangerous condition of the roof under which he was working, but, on the contrary, the roof was regarded as safe. It had not been propped, and props were not thought to be necessary until the mine was inspected by the mine foreman a few hours before the injury. The fact that the miner continued working after such inspection does not subject him to the charge of contributory negligence where the danger was not so open and obvious that a prudent person would not have continued working in the place.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

KNOWLEDGE OF DANGER—EXTENT OF DANGER.

It is a general rule that if a miner knows that the place in which he works is not in proper state of condition and he continues in the service, he can not recover for injuries flowing therefrom. But an exception is that mere continuance in the service is not per se or infallible negligence. The danger must be such as may reasonably be expected to entail accident and injury, not a remote probability or chance of accident. It must be such as a fairly prudent, cautious man ought to think would likely result in an accident and which he ought not to risk. The rule does not require a miner in all cases to stop work simply because he knows of the defective condition.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

WANT OF KNOWLEDGE OF DANGER.

The fact that a miner did not ascertain the immediate danger of the roof of his working place and could not by the ordinary tests discover the defect in the roof which caused his injury, is not sufficient to show the miner guilty of contributory negligence as a matter of law, by continuing to work where the roof was not obviously dangerous, but where an inspection by the mine boss in compliance with the law might have discovered the danger.

Vandalia Coal Co. *v.* Sheppard (Indiana Appeals), 113 Northeastern, 767, p. 768, October, 1916.

DEFENSE OF CONTRIBUTORY NEGLIGENCE NOT ABROGATED.

The statute of Indiana (Acts of 1911, p. 145, Burns, 1914, sec. 8020a) makes a coal-mine operator liable when injury results to a miner in whole or in part from the negligence of the operator. Under this provision contributory negligence of the miner is not available to the defense in an action by a miner for damages for injuries due to the alleged negligence of the mine operator.

Little Coal Co. *v.* O'Bryan (Indiana Appeals), 114 Northeastern, 96, p. 96, November, 1916.

MANNER OF OBEYING INSTRUCTION.

The statute of Indiana (Acts of 1911, p. 145) provides that an injured employee or miner shall not be held to have been guilty of contributory negligence where the injury resulted from the miner's conformity or obedience to any order or direction of the mine operator. If the injury complained of resulted from the conformity or obedience to an order, the miner shall not be held guilty of contributory negligence by reason of the mere fact that he did conform or was obedient to the order. His manner of carrying out the order, however, rather than the fact that he did carry it out, might not have been characterized by due care, and he might be injured by reason of the manner in which he carried out the order, rather than from the mere fact that he carried it out; and as applied to such cases, the statute does not eliminate the defense of contributory negligence.

Little Coal Co. *v.* O'Bryan (Indiana Appeals), 114 Northeastern, p. 96, November, 1916.

CONTRIBUTORY NEGLIGENCE A QUESTION OF FACT.

The statute of Indiana provides that in an action by a miner for damages occasioned by the negligence of the mine operator the question of contributory negligence of the miner "shall be a ques-

tion of fact for the jury to decide," unless the case is tried by the court. This is simply a restatement of the law in relation to trial by the jury as it existed prior to the enactment of the statute.

Little Coal Co. *v.* O'Bryan (Indiana Appeals), 114 Northeastern, 96, p. 97, November, 1916.

DUTIES IMPOSED ON MINER.

RIDING ON LOADED CAR—RECOVERY FOR DEATH.

The Pennsylvania statute (Act of June 2, 1891) prohibits any person from riding upon a loaded car or cage. But the fact that a coal-mine operator does not provide other means for his employees to get out of the mine, does not constitute such negligence on the part of the mine operator as will justify a recovery for a death of a miner, resulting from a violation of the statute, unless such failure is the proximate cause of the death.

Maguire *v.* Philadelphia & Reading Coal & Iron Co. (Pennsylvania), 99 Atlantic, 166, p. 167, July, 1916.

STATUTORY ACTION FOR WRONGFUL DEATH.

LIABILITY OF OPERATOR—PROXIMATE CAUSE.

Section 4 of article 17 of the anthracite coal mine act (Act of June 2, 1891, Pennsylvania Laws, 176) gives a right of action against a coal-mine operator for the death of an employee occasioned by any violation of the statute or any failure to comply with its provisions. This statute does not warrant a recovery for the death of a miner, who, with other miners, had ridden out of the mine on a loaded car, due to the negligence of the engineer in failing to open the relief valves of the engine, and in consequence the car was carried some distance beyond the landing, and the miner, with others, fearing he would be thrown down the slope along with the timbers, jumped from the car, and in so doing he fell under the car and was killed. The miner's death under such circumstances can not be charged to any negligence of the mine operator in failing to furnish an empty car for the miner and other employees to ride out of the mine, as the accident was not due to the miner's riding on the loaded car, but to the negligence of the engineer in failing to stop the engine and the cars at the landing. A violation of the statute on the part of a mine operator will not subject him to damages for an injury or death, unless his violation of the statute is the proximate cause of the injury complained of.

Maguire *v.* Philadelphia & Reading Coal & Iron Co. (Pennsylvania), 99 Atlantic, 166, p. 167, July, 1916.

EMPLOYER'S LIABILITY AND WORKMEN'S COMPENSATION ACTS.

CONSTITUTIONALITY OF EMPLOYER'S LIABILITY LAW.

The employer's liability act of Texas (Acts 33d Leg., chap. 179) is constitutional.

Consolidated Kansas City Smelting & Refining Co. *v.* Dean (Texas Civil Appeals), 189 Southwestern, p. 747, November, 1916.

MINER NOT GUILTY OF WILLFUL MISCONDUCT—MEANING.

A miner working in a shaft with directions that when his work was completed he was to go to another shaft and work there, and who, after completing his work, on a day insufferably hot, while passing from the completed shaft to the other in which he was to work, stopped temporarily to rest in the shade of an ore bin and while so resting was killed by the collapse of the bin, can not be charged with willful misconduct of the law such as to defeat his right to compensation under the California Workmen's Compensation Insurance and Safety Act.

Brooklyn Mining Co. *v.* Industrial Accident Commission (California), 159 Pacific, 162, June, 1916.

INJURY ARISING IN COURSE OF EMPLOYMENT.

The statute of Kansas provides that the words "arising out of and in the course of employment" as used in the statute shall not include injuries to an employee occurring while he is on his way to assume the duties of his employment or after leaving such duty. (Laws of 1913, chap. 216, sec. 4.) A miner is within the course of the employment and entitled to the protection of the statute where, after quitting work, he changed his mining clothes for street clothes in his room and walked along an entry of the mine leading toward the shaft for the purpose of ascending to the top of the mine. He wore his miner's lamp in order to find his way to the bottom of the shaft, and while passing through an entry struck his face against a piece of slate hanging from the roof, which resulted in the destruction of one eye. So long as the miner was in the mine he was under obligation to observe the rules prescribed by the operator and the operator was bound to provide him not only a safe place to work but also a safe passageway out of the mine and the means to carry him safely to the top. The miner's duty did not end until he left the mine and the operator's duty toward the miner continued until that time. The relation of employer and employee clearly existed at the time of the injury and the miner is entitled to compensation under the Kansas workmen's compensation act.

Sedlock *v.* Carr Coal Mining & Manufacturing Co. (Kansas), 159 Pacific, 9, July, 1916.

LIABILITY TO INJURED EMPLOYEE.

Section 3 of the employer's liability act of Texas (Acts 33d Leg., chap. 179), provides that employees of a subscriber or member of the Texas Employees' Insurance Association shall have no right of action against their employer for personal injuries, but any injured employee must look for compensation to the employees' insurance association. An employee who enters the employment of an oil-drilling corporation with knowledge that the corporation is a subscriber or member of the employees' insurance association, and under a written agreement to the effect that in case of his injury in the employment, he waives his right to maintain a suit against the employer, but will look to the association for his compensation, is bound by such an agreement, and can not in case of injury maintain as action against the corporation for damages.

Consolidated Kansas City Smelting & Refining Co. *v.* Dean (Texas Civil Appeals), 189 Southwestern, p. 747, November, 1916.

MINES AND MINING OPERATIONS.

RELATION OF MASTER AND SERVANT.

EMPLOYMENT UNDER SPECIAL CONTRACT.

Two miners were employed or engaged to drive a heading, for which they were paid so much per yard for the rock they shot out to make the proper height of the entry and so much per ton for the coal mined, and they worked under the orders of the superintendent of the mine operator and were subject to be discharged at any time for a failure to carry out the superintendent's instructions. Their work was examined by the superintendent, and the mine operator furnished the cars for removing the rock and coal mined and sprinkled the mine and entry. The mine operator had control over the means and agencies by which the mining of the coal and the driving of the entry was carried on. Under such circumstances the relation of master and servant existed between the mine operator and the two miners, and any negligence on the part of the mine operator resulting in injury to one of the miners renders him liable in an action for damages.

Wadsworth Red Ash Coal Co. *v.* Scott (Alabama), 72 Southern, 542, p. 544, June, 1916.

NEGLIGENCE OF OPERATOR.

FAILURE TO FURNISH EMPTY CARS FOR TRANSPORTATION OF MINERS.

It is negligence for a mine operator to fail to furnish empty cars for the miners and employees to ride in and out of the mine where they are prohibited by statute from riding on loaded cars. If the mine operator, under such circumstances, permits or acquiesces in the miners riding the loaded cars, he will not be heard to say, in case of an action for damages, that the miners violated the statute. But the negligence of a mine operator in this respect will not render him liable for an injury or the death of a miner unless the particular negligence was the proximate cause of the injury or death.

Maguire *v.* Philadelphia & Reading Coal & Iron Co. (Pennsylvania), 99 Atlantic, 166, p. 167, July, 1916.

FAILURE TO FURNISH SAFE APPLIANCES AND SUFFICIENT FORCE.

An oil company employed common laborers and assigned them to the duty of drilling a deep well by hand. The work was done with three sets of heavy tongs with long handles that gripped the pipe, and the laborers by pushing or pulling these handles operated the pipe as an augur for boring the hole. If under such circumstances the force is suddenly reduced or if a single tong, by reason of its being worn, suddenly loosens its hold the resistance of the pipe will overcome the remaining force and untwist with a violence in proportion to the extent of the twisting and in so doing will carry around with it any tong that still holds its grip. Under such circumstances an oil company by its proper officers is bound to foresee the possibility of an accident which may result from the character of the work and appliances so furnished. Each employee has a right to engage in the work with the assurance that the employer will do his duty and protect him against dangers, which are not obvious and of which he was not sufficiently warned, either by the employer or his own experience. Under these conditions an oil company employer is liable for the death of an employee struck by the handle of one of the whirling tongs on the untwisting of a pipe, where one set of tongs, by reason of the jaws being allowed to become loose and the teeth worn off, suddenly lost the grip on the pipe and where the force had been reduced by the company and the employees with the other tongs had not strength sufficient to prevent the untwisting of the pipe.

Porter *v.* Rogers Oil & Gas Co. (139 Louisiana), 72 Southern, 732, p. 732, October, 1916.

LEAVING POWDER IN CANS—INJURY TO CHILD.

A coal-mining company is liable on the ground of negligence for leaving small quantities of powder in cans on the ground near its powder house where children have access to them. The fact that the children took the powder from the cans and carried it in other cans some 300 yards from where it was obtained and that one child applied a lighted match to the powder, causing an explosion of powder in a can carried by another child to its permanent injury, does not relieve the coal-mining company from liability.

Folsom-Morris Coal Mining Co. *v.* De Vork (Oklahoma), 160 Pacific, 64, p. 65.

PLEADING AND PROOF OF NEGLIGENCE.

QUESTION OF FACT.

In an action by a driver against a coal-mine operator for damages for injuries caused by jumping from his car when the mule he was

driving began to kick, it is a question of fact for the jury to determine whether the driver in jumping from the car acted as a reasonably prudent man would under like conditions.

Robel *v.* Philadelphia & Reading Oil & Coal Co. (Pennsylvania), 98 Atlantic, p. 959, July, 1916.

PROOF OF NEGLIGENCE.

Negligence like any other fact may be inferred from a preponderance of the evidence whether it be circumstantial or direct. A plaintiff in an action for injuries caused by negligence of an oil company drilling an oil well is not bound to prove his case beyond a reasonable doubt and he is not bound to produce direct evidence as to what caused the casing or pipe to fall, that produced the injury, but this may be inferred from all the circumstances in the case.

Arundell *v.* American Oilfields Co. (California), 160 Pacific, 159, p. 166, August, 1916.

DUTY TO FURNISH SAFE PLACE.

FAILURE TO FURNISH SAFE PLACE.

A mine operator who requires his miners to use lagging or plank and ladders in traveling from one part of the mine to another is under a duty to use reasonable care to provide the miners with a safe place and to make such appliances safe and to keep such places and the entrances thereto in reasonably safe condition, and to inspect such places and see that they are in safe condition. A miner injured while in the discharge of his duties and while using such defective and insecure lagging and broken ladder is entitled to recover damages on the ground of the negligence of the mine operator, where it was no part of the duty of the injured miner to repair or replace the defective lagging or broken ladder.

Gold Hunter Mining & Smelting Co. *v.* Johnson, 233 Federal, 849, p. 856.

DUTY TO KEEP ROOF SAFE.

In the operations of a coal mine it was made the duty of persons known as loaders to follow the machine man and shoot down the coal by blast, load it into cars and remove it from the mine and prepare the room by propping the roof with timbers to within about 14 feet of the face of the coal, to examine and test that part of the roof not propped, and to take down any loose slate in order that the room might be made reasonably safe for the machine man to make another cutting. When the room was thus propped by the loaders it was also their duty to inform the machine men that the room was ready for another cutting, and thereupon the machine men would reenter the propped room and make another cutting in the face of

the coal. Under such circumstances the loaders and the machine men were not fellow servants, but the loaders in the preparation of the room for the machine men represented the mine operator, and the negligence of the loaders in leaving the roof in an unsafe condition, with a knowledge of such condition and reporting to the machine men that the room was ready, renders the mine operator liable in damages for injuries to a machine man who was subsequently injured by a fall of rock from the roof.

Consolidated Coal Co. *v.* Music (Kentucky), 189 Southwestern, 200, p. 201, November, 1916.

DUTY TO PROVIDE SAFE APPLIANCES.

FURNISHING VICIOUS MULE—PROXIMATE CAUSE OF INJURY.

A driver in a mine was directed for the first time to drive a mule with vicious tendencies, of which he had no knowledge and was given no warning. As he was taking his car along the track the mule suddenly began to kick, and to escape injury the driver jumped from the car, alighting upon a pile of wet and slippery sills, by reason of which he slipped and fell under the car, receiving the injuries of which he complains. The fact that these sills were lying along the side of the track at the particular point where the driver jumped and which he did not see would not make them the proximate cause of the injury. Their presence at that point was merely an incident, the real cause of the accident being the kicking of the mule, which made it necessary or apparently advisable for the driver to suddenly leap from the car, and if in so doing he came in contact with obstructions the presence of these would be merely a secondary and not the proximate cause of his injury.

Robel *v.* Philadelphia & Reading Oil & Coal Co. (Pennsylvania), 98 Atlantic, 959, p. 960, July, 1916.

DUTY TO WARN OR INSTRUCT.

FAILURE TO WARN DRIVER OF VICIOUS MULE.

The vicious tendencies of a mule had continued for a sufficient length of time to warrant the conclusion that the mine operator had constructive notice of their existence, and it was therefore his duty to warn a driver beginning to use the mule of the animal's tendencies at times to kick and the danger liable to result therefrom. Under such circumstances the mine operator is liable for injuries received by the driver because of the vicious disposition of the mule, where it was the first time he had driven the mule, and he knew nothing of its disposition and received no instructions or warning as to its habits at the time he was ordered to use the mule.

Robel *v.* Philadelphia & Reading Oil & Coal Co. (Pennsylvania), 98 Atlantic, p. 959, July, 1916.

MINER'S WORKING PLACE—SAFE PLACE.

DUTY OF MINER TO OBSERVE DANGEROUS CONDITION.

A miner working in a mine is not required to make an investigation or inspection to ascertain whether or not the duties of the mine operator have been performed, but he must have due regard for what he actually knows and what is so patent as to be readily observed by him, by the reasonable use of his senses, in view of his age, intelligence, and experience.

Hammett *v.* Victoria American Fuel Co., 236 Federal, 526, p. 528.

DUTY OF MINER TO MAKE WORKING PLACE SAFE.

A miner injured while shoveling dirt into a can on a car on the tracks in a mine by reason of the can upsetting and falling upon him because of the uneven condition of the track, due to the alleged negligence of the mine operator in failing to keep the track in proper repair, can not recover from the mine operator on the ground of negligence, where it was the duty of the miner to clear the track of dirt or falls before it was the duty of the track repairers to examine and repair the track after a fall of rock or dirt, and where the injury occurred while the miner was so clearing the dirt from the track.

Plumlee *v.* Swan Machine Co. (Missouri), 189 Southwestern, 580, p. 581, November, 1916.

ASSUMPTION OF RISK.

RISKS ASSUMED.

RISK OF DANGERS FROM WORK.

A miner engaged with others in the driving of an upraise in a mine and whose duty it is in connection with others to bar down from the face and sides of such upraise all loose rock and material, and after a blast to clean from the ladders and the sides of the upraise all broken rock and débris before commencing drilling another set of holes, and in the prosecution of which work even in a good and workmanlike way there is more or less danger, assumes the danger ordinarily incident to such work, including the falling of rock after a blast, and can not recover for injuries received while performing such work caused by a fall of rock where the mine operator is not guilty of any negligence on his part.

Macaulay *v.* Alaska Gastineau Mining Co., 234 Federal, 611, p. 612.

DANGERS OF SERVICE.

A miner by entering or continuing in the employment of a mine operator without complaint assumes the risks and dangers of the

service which he knows and appreciates, including those which are incident to the employment and which are contemplated in the contract of hiring and those which arise from the failure of the mine operator fully to discharge his duty to exercise ordinary care to furnish the miner with a reasonably safe place to work and reasonably safe appliances to use.

Hammett *v.* Victoria American Fuel Co., 236 Federal, 526, p. 528.

KNOWLEDGE OF DANGER—FEAR OF DISCHARGE.

A miner was killed by a fall of rock from the roof while at work in a place he knew to be dangerous and where he himself, not satisfied with the test made by the foreman, made an independent investigation and knew that the roof was in a dangerous condition, and where later the roof was heard to crack, causing at least one of the workmen to flee from the place, but the miner continued and was killed by a subsequent fall. The miner's assumption of risk is not to be overcome and a recovery against the mine operator permitted on the theory of a presumed fear of discharge if the miner refused to continue work in the dangerous place, in the absence of conduct on the part of the superior which would warrant such a presumption, or some disinclination on the part of the miner to incur the danger even though his reluctance was not carried to a point of absolute refusal.

Hammett *v.* Victoria American Fuel Co., 236 Federal, 526, p. 529.

NEGLIGENCE OF FELLOW SERVANTS—EXCEPTIONS.

The risk a miner assumes in his employment, such as knowledge of defects in the ways and places of work, or incompetency of his fellow servants, and knowledge or comprehension of the danger and its voluntary acceptance by continuance in the service, can only be overcome by evidence showing that the miner complained to his superior or to the operator of the incompetency of his fellow servant, that the complaint was made for his own protection and that the mine operator or such superior promised to remedy the same and that the miner's continuance in the service was due to his reliance on the fulfillment of such promise and the time which had elapsed since the making of the promise and the happening of the injury was not unreasonable therefor.

Riddley *v.* Churchfield Coal Corp. (Virginia), 89 Southeastern, 921, p. 933, September, 1916.

DANGERS APPRECIATED.

In an action for the death of an employee in an ore-sampling mill, where there is no dispute as to the facts and the danger of the risk of injury is of such a character that a person of ordinary prudence

and intelligence ought to have known and appreciated it, there is nothing for the jury to pass upon and the court may direct a verdict for the defendant.

Virend *v.* Utah Ore Sampling Co. (Utah), 160 Pacific 115, September, 1916.

RISKS NOT ASSUMED.

DEFECTIVE APPLIANCES.

A ladder in a mine used by miners in passing from one stope to another was broken by a fall of rock and the miners were instructed to use another passageway in passing to and from the stopes. A miner in using the way as directed had a right to assume that the mine operator had used reasonable care to make the way which he had been directed to take a safe one and the miner is not to be regarded as having assumed the risk from a faulty construction of the way attributable to the mine operator's lack of proper care, where he had no knowledge of the defect and it was not so plainly observable that he was presumed to know of it.

Gold Hunter Mining & Smelting Co. *v.* Johnson, 233 Federal, 849, p. 857.

ORDINARY RISKS—MEANING AND EXTENT.

The term "ordinary risks" does not mean that an employee assumes all risks of injury that may result in the ordinary course of his employment as the employer under such a rule would never be liable. The ordinary risks which an employee assumes are such as may not be avoided by the exercise of reasonable care by the employer, or by an employee who is superior to the injured employee.

Arundell *v.* American Oilfields Co. (California), 160 Pacific, 159, p. 165, August, 1916.

DANGERS NOT CONNECTED WITH WORK.

An employee whose duty was that of a tool dresser in connection with an outfit for drilling oil wells, does not assume the risk of injury caused by a falling pipe due to the negligence of the shift or tower boss, and especially where the injured employee, when at his post of duty, was in no situation to observe what the tower boss was doing or how he was doing it.

Arundell *v.* American Oilfields Co. (California), 160 Pacific, 159, p. 165, August, 1916.

NEGLIGENCE OF MOTORMAN.

A brakeman on a motor trip hauling coal out of a mine does not assume the risk of the incompetency and recklessness of the motorman operating the motor hauling the trip, although the motorman's

incompetency and recklessness were known to the brakeman, where they were also known to the mine operator; but where the brakeman objected and refused to brake on the trip with the motorman until assured by the operator or his superintendent that he had directed the motorman to run the trip properly and with due care and where upon such assurance the brakeman accompanied the trip and was injured in a collision, owing to the incompetency and negligence of the motorman.

Riddley *v.* Churchfield Coal Corp. (Virginia), 89 Southeastern, 921, p. 932, September, 1916.

See Borderland Coal Co. *v.* Kerns (Kentucky), 188 Southwestern, 783, p. 785, October, 1916.

CONTRIBUTORY NEGLIGENCE OF MINER.

KNOWLEDGE OF DANGER—INDEPENDENT INVESTIGATION.

There can be no recovery against a mine operator on the ground of negligence for the death of an experienced miner caused by a fall of rock from the roof where he knew that a fall had already occurred and that the usual timbers were absent, that the roof was in a shaky condition, and that another fall of rock came down while he and others were at work and where the foreman tested the roof and the miner himself, not satisfied with the foreman's testing, took a pick and tested it for himself, thereby indicating his appreciation and knowledge of the danger. Later and before the fatal accident the roof was heard to crack and one miner fled in apprehension. The miner with this knowledge continued the work and a few minutes later was killed by another fall of rock.

Hammett *v.* Victoria American Fuel Co., 236 Federal, 526, p. 528.

QUESTION OF FACT.

A miner passing from one part of the mine to another was injured while passing over defective and dangerous lagging. In an action for damages for the injuries thus occasioned the question as to whether or not the miner for his own convenience, carelessly chose to use the plank way in preference to another and safe way, is a question of fact for the jury to determine; and the jury must determine under such circumstances whether the miner in so chosing his way was guilty of contributory negligence.

Gold Hunter Mining & Smelting Co. *v.* Johnson, 233 Federal, 849, p. 856.

KNOWLEDGE OF DANGER—QUESTION OF FACT.

Two miners were engaged in driving a heading in a mine and had advanced the work between 50 and 75 feet of the place to which the entry had been measured up and accepted by the mine operator.

After the acceptance of the work by the operator the miners had nothing further to do with the roof of the entry, but the duty of keeping it safe thereafter devolved on the mine operator. At the time the work was measured up and the entry accepted there was no loose rock on the roof of the entry. The miners were compelled to use the entry in going to and from their work and to get their powder and appliances with which to conduct their mining. Under the circumstances the question of contributory negligence of one of the miners, who was injured by a fall of rock from the roof of a part of the entry that had been accepted by the mine operator, was a question of fact for the jury, where there was a conflict in the evidence as to whether the roof of the entry had been accepted and the dangerous condition of the rock discovered, and where both miners denied that they had been given any notice or warning of the dangerous condition of the roof of the entry.

Wadsworth Red Ash Coal Co. *v.* Scott (Alabama), 72 Southern, 542, p. 544, June, 1916.

DEFENSE—BURDEN OF PROOF.

Contributory negligence is a defense, and the burden rests upon the mine operator to establish it in an action against him for damages for injuries due to his alleged negligence, unless the complainant's own evidence proves the fact of his contributory negligence.

Haptonstall *v.* Boomer Coal & Coke Co. (West Virginia), 89 Southeastern, 723, p. 726, September, 1916.

VIOLATION OF RULES—CUSTOM NOT ESTABLISHED.

A mine conductor in control of an engine and cars hauling coal out of a mine, who was injured while riding on the pilot beam in violation of the express rules of the mine operator, can not avoid the force of the rule by proof of the knowledge and acquiescence of the mine operator in such violation, where the evidence shows that the employees rode on the engine "on the sly" and when caught violating the rule by the officers of the mine operator they were warned and reprimanded.

Virginia & Southwestern Railway Co. *v.* Hill (Virginia), 89 Southeastern, 985, p. 896, September, 1916.

VIOLATION OF RULE—PROXIMATE CAUSE.

An experienced mine conductor in charge of an engine and cars hauling coal out of the mine and his two brakemen were riding on the pilot beam in front of the engine going into the mine. While

the engine was proceeding at a low rate of speed into the mine, the conductor descended to the small metal step attached to the beam, in order to direct the brakemen to cut out the proper number of cars. While in that position the step struck a loose rock or lump of coal and he was thrown or stepped off in front of the engine and received the injuries complained of. The conductor was familiar with the rules of the company and knew that the rule required him and his brakemen to ride inside of the cab of the engine when there were no cars attached and forbade their riding on the front of the engine or pilot beam. Under such circumstances his violation of the rules must be regarded as the proximate cause of the injury, where it appears there was no defect in the step and that the step, after the accident, was found to be intact.

Virginia & Southwestern Railway Co. *v.* Hill (Virginia), 89 Southeastern, 895, p. 896, September, 1916.

FREEDOM FROM CONTRIBUTORY NEGLIGENCE.

FREEDOM FROM CONTRIBUTORY NEGLIGENCE—ACTING UNDER DANGER.

It is not contributory negligence on the part of a miner riding out of a mine on a car where he jumped from the car under a reasonable apprehension that if he had remained on the car injury would have resulted.

Maguire *v.* Philadelphia & Reading Coal & Iron Co. (Pennsylvania), 99 Atlantic, 166, p. 167, July, 1916.

DANGER NOT OBVIOUS.

A coal-mine operator made it the duty of the loaders to shoot down and remove the coal after it was cut, to set the necessary props, to inspect and remove any loose rock from the roof where the machine men were to work and that could not be propped because of the operation of the machine, and to notify the machine men when a room was ready for further cutting. A machine man injured by a fall of rock from the roof because of the failure of the loaders to inspect and remove it, is not to be charged with contributory negligence and his action for damages for injuries defeated on that ground where the danger was not obvious and the roof at the time he entered and began work with the machine appeared to be safe and where he was not required to inspect the roof of the room, except by looking, and where he was not authorized or prepared to make further inspection.

Consolidated Coal Co. *v.* Music (Kentucky), 189 Southwestern, 200, p. 202, November, 1916.

WANT OF KNOWLEDGE OF DANGER.

A miner was injured while shoveling dirt into a can on a car on the track in a mine. While so engaged, and due to the alleged negligence of the mine operator in not keeping the track in a safe condition and reasonably level, the can, by reason of the defective condition of the track and its being uneven and lower on one side than the other, upset and fell on the miner, causing the injuries complained of. The miner's recovery is not to be defeated because of contributory negligence, where it is not made to appear that there was a safe and unsafe way to do the work and that the miner chose the unsafe way. The miner was inexperienced and had just filled two cans of dirt at the same place in perfect safety, and the danger of filling the can as he did was not so glaringly dangerous as to make him guilty of contributory negligence as a matter of law.

Plumlee *v.* Swan Machine Co. (Missouri), 189 Southwestern, 580, p. 581, November, 1916.

ERROR IN EXTREMIS.

An experienced mine conductor was riding into the mine on the pilot beam of his engine in violation of the rules prescribed by the mine operator. The conductor was standing on the metal step attached to the pilot beam, and while the engine was proceeding at a low rate of speed the step struck a rock or lump of coal, and the conductor, thinking the step was broken and seeing no other way of escape, stepped forward and down on the track in front of the moving engine and received the injuries of which he complains. In an action for damages for such injuries the conductor can not escape the effect of his violation of the rules by invoking the doctrine of "error in extremis" and escape the effect of his own negligence. The principle of error in extremis does not apply to self-imposed emergencies, but the doctrine presupposes that the party who invokes it is himself free from fault in creating the emergency. At the time of the alleged emergency the conductor was riding on the front of the engine in conscious violation of a rule established for his own safety, and it would be a strange perversion of justice to visit on the coal-mine operator the consequences of the injured conductor's violation of the rule.

Virginia & Southwestern Railway Co. *v.* Hill (Virginia), 89 Southeastern, 895, p. 896, September, 1916.

DRIVER ACTING UNDER SUDDEN DANGER.

A driver in a coal mine was directed for the first time to drive a vicious mule without knowledge of such vicious tendencies. The bumper of the car upon which the driver was riding was within about 4 feet of the mule drawing the car. The mule suddenly began to kick, and to escape injury and free himself of danger the driver

jumped from the car, alighting upon a pile of sills that were lying alongside the track, and owing to the sills being damp and slippery the driver slipped and fell under the car, receiving the injuries complained of. Under these circumstances the driver could not be held to the same degree of accountability for jumping from the car as he would under ordinary conditions, and the fact that in his haste he may not have chosen the side of the car that was least dangerous or presented the least obstructions for landing would not as a matter of law convict him of contributory negligence. The sudden and unexpected kicking of the mule placed the driver in a position of peril where his only means of escape was from the car on one side or the other, and in choosing the direction in which to jump he could not be expected to exercise the same degree of care and caution as he would if no danger existed.

Robel *v.* Philadelphia & Reading Oil & Coal Co. (Pennsylvania), 98 Atlantic, 959, p. 960, July, 1916.

NEGLIGENCE OF VICE PRINCIPAL.

AGENT ACTING FOR CORPORATION.

A corporation operating outfits for drilling oil wells is liable for the negligence of its agent or representative acting for it: and where such vice principal adopted a plan of handling the tools and pipe which was unsafe, by hoisting a pipe into a dark space where the timber knot by which it was held could not be seen or any tendency of its slipping be observed, and by not using the elevator, which would have held the pipe in perfect security, and an employee assisting in the drilling of an oil well is entitled to recover damages for injuries caused by the fall of the pipe.

Arundell *v.* American Oilfields Co. (California), 160 Pacific, 159, p. 164, August, 1916.

NEGLIGENCE OF EMPLOYEE VESTED WITH AUTHORITY.

The civil code of California (sec. 1970) expressly provides that an employer shall be liable for an injury to an employee when the same results from the wrongful act, neglect, or default of a person employed by such employer having the right to control or direct the services of the injured employee. Under this statute, and by virtue of the authority given by custom to the head driller or tower boss, he has a right to exercise authority over the drilling of an oil well, and is, in fact, the vice principal, and exercises authority over a tool dresser.

Arundell *v.* American Oilfields Co. (California), 160 Pacific, 159, p. 165, August, 1916.

LIABILITY FOR NEGLIGENCE OF FELLOW SERVANT.

FAILURE TO MAKE ROOF SAFE.

A mine operator may delegate to a competent employee or miner the duty to maintain a safe place and a safe entry in the mine, and the operator is not liable for the failure of such employee to keep the mine or entry safe, in case of injury to a miner, in the absence of proof of the incompetency of the miner whose duty it was to keep the mine safe. In such case the miner employed to keep the mine safe is a fellow servant of the injured miner.

Wadsworth Red Ash Coal Co. *v.* Scott (Alabama), 72 Southern, 542, p. 545, June, 1916.

NEGLIGENCE OF MOTORMAN.

A brakeman on a motor trip injured in a collision due to the negligence of the motorman is entitled to recover damages from the mine operator where the evidence shows that the motorman was incompetent because of his habitual negligence in reckless running; that the brakeman complained of the motorman's negligence a number of times to the mine operator and also a few hours before the accident; that the motorman's incompetency was known to the brakeman and the mine operator before the accident; that shortly before the accident the brakeman refused to brake on the trip with the motorman, but the mine foreman assured him that if he would brake he would have the motorman run slow so there would be no danger, and the brakeman accepted the employment on the assurance of the mine foreman that the motorman would operate the trip with due care.

Riddley *v.* Churchfield Coal Corp. (Virginia), 89 Southeastern, 921, p. 932, September, 1916.

Borderland Coal Co. *v.* Kerns (Kentucky), 188 Southwestern, 783, p. 785, October, 1916.

ADMISSION OF MINE FOREMAN—PURPOSE AND EFFECT.

In an action by a miner against a mine operator for damages for injuries caused by the negligence of a motorman, it is proper to prove the declarations of the mine superintendent who had authority to employ and discharge the motorman, tending to show his incompetence and unfitness, to prove not only the knowledge on the part of the mine operator of such incompetency, but also to prove the incompetency of the motorman. This must necessarily be true as a result of the law of agency and especially as to corporation principals. They must act entirely through these agents, who stand in relation to them as vice principals, and statements and declara-

tions against the principal made by such vice principals are, in law, statements and declarations of the principal himself. When such declarations are to the effect that a particular motorman is incompetent it is proof not only of the incompetency of the motorman but also of the principal's knowledge of such incompetency.

Borderland Coal Co. *v.* Kern (Kentucky), 188 Southwestern, 783, p. 785, October, 1916.

METHODS OF OPERATING.

PETITION FOR INJUNCTION—INSPECTION OF OPERATIONS.

In an action by the owner and occupant of a residence to enjoin a coal-mining company from operating its colliery and from carrying on its mining operations in proximity to his residence, on the ground that it constituted a nuisance, the court, on special application, entered an order requiring the mining company to permit the complainant's engineer to enter its colliery and breaker and other structures for the purpose of inspecting the appliances used in mining and preparing coal for market and ascertaining if anything was being done or omitted which would lessen the nuisance by preventing the emission of the dust complained of. After the complainant's engineer made the inspection pursuant to the order of the court, and on the final trial of the case, when the engineer was not called upon by the complainant to testify, the court was justified in taking into the consideration the absence of the engineer as a witness and in assuming that he found no violation of the law and no existing condition which a proper operation of the plant, or the adoption of other appliances would remedy.

Alexander *v.* Wilkes-Barre Anthracite Coal Co. (Pennsylvania), 98 Atlantic, 794, p. 795, May, 1916.

NUISANCE.

DAMAGES TO REAL ESTATE.

The business of mining is a lawful one, consisting of the development of the natural resources of the land in which the interests of the entire community are concerned; and where a mining company has made large expenditures of money, carries on its business in an ordinary way, adopts and uses the precautions usually and customarily prevailing in the operation of large coal-mining plants and collieries and customs prevailing in the operation of such plants, it is not accountable for incidental annoyances and damages which necessarily follow its mining operations.

Alexander *v.* Wilkes-Barre Anthracite Coal Co. (Pennsylvania), 98 Atlantic, 794, p. 795, May, 1916.

MINING LEASES.

LEASES GENERALLY—CONSTRUCTION.

EXTENSION OF TIME—RIGHTS OF SUCCESSORS.

The heirs, all adults, of a deceased widow, who in her lifetime held a mineral lease executed by her husband in his lifetime, accepted her succession unconditionally and without inventory. These heirs subsequently made a partition among themselves and permitted the lessee and grantee in the lease to drill producing oil wells within the terms of the lease as extended by the widow in her lifetime. The heirs by accepting the succession unconditionally and without the benefit of the inventory assumed the obligation of their mother, the widow, as to the extension of the lease; and the lease being indivisible, no one of the heirs could maintain an action to have the lease declared a nullity after disposing of his part of the land subject to the lease.

Cochran *v.* Gulf Refining Co. (139 Louisiana), 72 Southern, 718, p. 720, June, 1916.

LEASE PROCURED BY FALSE REPRESENTATIONS—REMEDY.

A lessee who was induced by false and fraudulent representation as to the mineral character of the land to accept a lease and who covenanted to pay a stipulated price therefor, may elect either to rescind the contract and recover back what he paid on the ground of fraud, or he may affirm the contract after he discovers the fraud and set up the damages by way of counterclaim in an action for the price; or if he has paid the price, he may sue and recover the damages for the fraud.

Bowen *v.* Matlack (Missouri), 188 Southwestern, 99, p. 100, July, 1916.

COVENANTS CONSTRUED AGAINST LESSOR.

Where there is any doubt or uncertainty as to the meaning of covenants in a mining lease they are construed strongly against the lessor and in favor of the lessee.

Niles Land Co. *v.* Chemung Iron Co., 234 Federal, 294, p. 298.

IRON MINING LEASE—CONTINUOUS OPERATION.

An iron mining lease in the usual form contained a covenant by which the lessee agreed to work the mine or mines now or hereafter discovered in good, workmanlike manner during the existence of this lease. Immediately following this is a provision for the payment by the lessee of a royalty of 25 cents per gross ton on all ore mined on the premises. This is followed by a further agreement on the part of the lessee to pay to the lessor a ground rent of $12,500 for the first year of the term and $18,750 per year for the balance of the term. This is followed by a provision that on the failure to work such mine or mines in a workmanlike manner, or to pay the ground rent or royalty when due, the lessor may declare the lease forfeited, and null and void. These clauses taken together disclose an intention to commute the minimum certain output of the mine and the royalties to result therefrom to a certain and definite sum designated "ground rent." The provision for ground rent found in the lease is an agreed substitute for actual and continuous operation. This is also manifest from the final clause providing for forfeiture, where no reference is made to continuous operation or mining as an obligation resting upon the lessee that might avoid forfeiture. This clause is to the effect that if the lessee shall fail to work the mine in good workmanlike manner or fail to pay the ground rent or royalties, then the lessor may declare a forfeit. Thus, it does not seem reasonable to subject the lease to total forfeiture for failure continuously to operate the mine. In addition to this, the practical construction by the parties by a continuous course of dealing for 10 years treated the lease as not obligating the lessee to continuous mining operation.

Niles Land Co. *v.* Chemung Iron Co., 234 Federal, 294, p. 298.

FORFEITURE.

Forfeiture of leases are not favored in law or equity and will not be enforced unless the right thereto is clear and conclusive.

Niles Land Co. *v.* Chemung Iron Co., 234 Federal, 294, p. 298.

EQUITY WILL PREVENT FORFEITURE.

A mining lease provided for mining the land described continuously. The lease was for a term of 10 years at a 10 per cent royalty. The lessor declared the lease forfeited, and in an action by the lessee to prevent such forfeiture the lessor claimed that the lessee and his assignees and sublessees had claimed to mine the land continuously in good faith and had practically abandoned mining operations for several days prior to the date of the forfeiture. The evidence of the

lessee tended to show that the forefeiture declared by the lessor was not due to any failure of the lessee and his sublesses to mine the land and to erect and maintain a mill thereon, but the purpose of the lessor was to avoid the lease which provided for a 10 per cent royalty and secure for himself leases paying 20 per cent royalty, the sum and amount paid by the sublessees to the lessee. To this end the lessor, about the time of declaring the forfeiture, interviewed certain of the sublessees then mining the land to accept from him new leases at 20 per cent royalty and to cease recognizing the original lessee as having any rights in the lands and to attorn to the lessor and pay him the entire royalty. The proof also showed that, after the alleged forfeiture by the lessor, the mining operations were carried on by the same parties in the same manner as before the forfeiture, except the lessor received 20 per cent royalty from such sublessees and refused further to receive the 10 per cent from the lessee under the original lease. The lessor in his notice of the intended forfeiture made no claim on the ground of failure to do continuous mining, but based his right to the forfeiture on the lessee's failure to erect a mill as provided in the lease. Under the circumstances shown a court of equity at the suit of the lessee would interfere to prevent the forfeiture of the lease.

Stoddard *v.* Sheridan Adams Royalty Syndicate (Missouri), 189 Southwestern, p. 634, November, 1916.

FAILURE OF LESSEE TO DO CONTINUOUS MINING—FORFEITURE.

A mining lease provided for mining land continously in good faith, and obligated the lessee to erect, maintain, and operate at least one modern mining plant and mill of the capacity of at least 100 tons for each 10-hour shift. The lease was to run for 10 years. The lessor is not entitled to declare and enforce a forfeiture of the lease because of the lessee's failure to erect and maintain a mining plant and mill as required by the lease, where it was shown that a mill was erected, but the ores discovered were not sufficient in quantity and quality to make the operation of the mill profitable, and with the lessor's knowledge and acquiescence the mill was abandoned and removed; and where the lessee and his subtenants had mined the land for three or four years without any such mill; and where it appeared they were no more in need of such a mill at the time of the notice of the forfeiture than they had been for the previous years; and where at the time of the forfeiture the lessee was sinking a new shaft, had not refused to erect a mill and declared his willingness to do so as soon as suitable ore was discovered and the mill could be profitably used.

Stoddard *v.* Sheridan Adams Royalty Syndicate (Missouri), 189 Southwestern, p. 634, November, 1916.

FAILURE TO DEVELOP—ABANDONMENT.

On December 22, 1886, the owner of certain tracts of land by an instrument in writing agreed to convey to the other party to the instrument certain undivided interests in two described tracts of land and gave the grantee for a term of 50 years the exclusive right and option for a mining lease upon the interests agreed to be conveyed, with a right to enter and explore for minerals and to use such timber as was necessary for the purpose of exploration, and the purchaser was to sell to the seller all the merchantable timber upon the interest conveyed after the issuance of patents for the lands described. If merchantable ore of not less than 10,000 tons was discovered the purchaser agreed to exercise his option to take a lease within 90 days after the completion of a railroad near the property; and on failure of the purchaser to exercise the option the seller had a right to lease on like terms the interest held by him. Under the agreement the purchaser was to pay a stated consideration for the conveyance. The 50-year option granted by the instrument was not lost by mere lapse of time on the ground of abandonment. There was not an expressed agreement on the part of the optionee to explore for minerals and none can be implied. The land was remote and difficult of exploration, and patents from the Government had not been issued and there was only a possible mineral value. The agreement itself anticipated a possible long wait and the option was made in view of that fact. The option was given for a valuable and substantial consideration and the optionee by the instrument obtained an undivided fee interest, more than a mere option; and in the absence of an agreement, express or implied, to explore, a failure to enter and explore did not forfeit the agreement, nor can it be considered as abandoned because of the lapse of time.

Mineral Land Inv. Co. *v.* Bishop Iron Co. (Minnesota), 159 Northwestern, 966, p. 966, November, 1916.

ABANDONMENT.

Leases or option agreements expressedly or impliedly requiring exploration work may be abandoned, or they may be forfeited for failure to make the contemplated and required exploration.

Mineral Land Inv. Co. *v.* Bishop Iron Co. (Minnesota), 159 Northwestern, 966, p. 967, November, 1916.

EFFECT ON ALIENATION.

A 50-year exclusive right and option for a mining lease upon an undivided interest in certain described lands executed on a valuable

consideration does not suspend the absolute power of alienation and does not violate the rule against perpetuities.

Mineral Land Inv. Co. *v.* Bishop Iron Co. (Minnesota), 159 Northwestern, 966, p. 967, November, 1916.

COAL LEASES.

GUARDIAN HAS NO POWER TO LEASE COAL LANDS.

The statute authorizing a guardian to lease the real estate of his ward contemplates ordinary leases for farming or like purposes, but it does not authorize the guardian to enter into a contract to lease coal lands for the purpose of mining and carrying away the coal. Coal in a mine on land owned by infants is a part of the real estate of such infants, and the guardian can not any more sell the coal than he can the land of the ward, unless authorized by a court of competent jurisdiction in a proceeding brought for the purpose of selling the coal.

Daniels *v.* Charles (Kentucky), 189 Southwestern, 192, p. 194, November, 1916.
McCoy *v.* Ferguson (Kentucky), 189 Southwestern, 191, p. 192, November, 1916.

STATUTE AUTHORIZING GUARDIAN TO LEASE—APPLICATION.

The statute of Kentucky (Acts of 1916, p. 657) authorizing the guardians of infants to lease coal lands of their wards on order of the proper court to do so has no application to a lease made long before the statute took effect.

McCoy *v.* Ferguson (Kentucky), 189 Southwestern, 191, p. 192, November, 1916.

COAL LEASE EXECUTED BY LIFE TENANT.

The rule is that where the owner in fee of coal lands has executed an enforceable lease for mining purposes prior to the commencement of the life estate, the life tenant may open and operate mines, although no mines had been opened under the lease. But where the owner of the fee in his lifetime executed a valid and enforceable lease of the coal in and under the real estate, neither the widow as a life tenant nor as guardian for the minor children can execute a valid lease for the coal and authorize the lessee to mine and remove the coal, where the original mining lease made by the owner of the fee had expired before the execution of the lease by the widow for herself and as such guardian.

Daniels *v.* Charles (Kentucky), 189 Southwestern, 192, p. 194, November, 1916.

AUTHORITY OF GUARDIAN TO LEASE COAL LANDS.

Under the statute of Kentucky (sec. 2031), the guardian of an infant may lease coal lands, or a coal mine, under the proper order of court. But a judgment enjoining a person in possession of the ward's land from mining and removing coal and reciting that the defendant might do this under a "valid and lawful lease" entered into with the statutory guardian of the infant is not sufficient authority for the execution of such a lease by the guardian. The meaning of such judgment is that if the guardian had been empowered by order of court, in a proceeding brought for that purpose, to make such a lease, then pursuant to the authority so conferred he could make a lawful lease; but in the absence of such an order a guardian has no power to enter into a lease by which coal may be taken from the land of his ward.

McCoy *v.* Ferguson (Kentucky), 189 Southwestern, 191, p. 192, November, 1916.

OIL AND GAS LEASES.

NATURE AND CONSTRUCTION OF LEASE.

A different rule of construction obtains with reference to the option of oil and gas leases from that of options to purchase, or ordinary leases. The reason is the danger of loss to the land owner from draining his oil away by wells sunk on the surrounding lands and such leases are construed most strictly against the lessee and in favor of the lessor, especially where the lessee may delay performance indefinitely.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 267, June, 1916.

NATURE AND RIGHTS UNDER.

An oil and gas lease passes no title but gives merely the right to explore for oil and gas under the terms of the agreement.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 266, June, 1916.

CONSTRUCTION—UNCERTAINTY AND VALIDITY.

An oil and gas lease for a term of one year and as long thereafter as gas or oil should be found in paying quantities, provided, among other things, that the lessee should mine a well on the premises within 90 days and on failure to do so the lease should be null and void, unless the lessee should pay for the delay at the rate of $1 per acre per annum thereafter until a well should be commenced. There is no infirmity in such a lease and it is not void for uncertainty as to the time when the rent should be paid if a well was not commenced within 90 days. The clause "$1 per acre per annum" indi-

cates that the lease was to be of some considerable duration and indicates the possibility of a delay in commencing operations, and as specific dates when the rents were payable were wanted payment at reasonable intervals on demand would be sufficient to avoid the forfeiture.

Bloom *v.* Rugh (Kansas), 160 Pacific, 1135, p. 1136, October, 1916.

CONSTRUCTION—RIGHTS AS BETWEEN SEPARATE LESSEES.

There may be technical differences between oil and gas leases and ordinary leases between landlord and tenant, but there is no ground for abrogating the ordinary rule that a claimant to any interest in real estate can not depend upon the weakness of his adversary's title, but must rely on the strength of his own, and the other ancient rule "first in time first in right." The right to terminate a lease pursuant to its provisions might be important in an action between the lessor and lessee, but the provision for termination has no relevancy between rival lessees, both holding leases containing the identical stipulation.

Bloom *v.* Rugh (Kansas), 160 Pacific, 1135, p. 1136, October, 1916.

EFFECT OF GRANT—TITLE TO OIL.

Oil and gas while in the earth, unlike solid minerals, are not the subject of ownership distinct from the soil, and a grant of the oil and gas is a grant not of the oil that is in the ground but of such a part as the grantee may find and reduce to possession, and passes nothing except the right to explore for the same under the terms of the agreement or lease.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 266, June, 1916.

OPTION AGREEMENT.

An oil and gas lease provided among other things that the lessee should begin operations within six months, and upon failure to do so should pay annually $500 to the lessor, or into a certain named bank, and on failure to commence operations or to pay the money it should be null and void, is nothing more than an option to the lessee to explore for oil and gas and has the effect of preventing the lessor from leasing the premises to another during the time the commutation money may be paid for any particular period. The failure of the lessee to pay in advance at or before the expiration of any named period puts an end to the lease and a forfeiture may be declared by the lessor.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 266, June, 1916.

PAYMENT OF COMMUTATION MONEY—EFFECT OF CHECK.

An oil and gas lease provided among other things that upon failure of the lessee to begin operations he should pay annually $500 into a certain bank. The mailing of an unsigned check to such bank a few days before the same was due and thereafter mailing a check properly signed to the same bank some days after the amount was due, does not constitute a payment under the terms of the lease.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 267, June, 1916.

OPTION LEASE—SPECIFIC PERFORMANCE.

An oil and gas lease providing among other things for the annual payments of money that are mere stipulations for delay in the performance, constituting a mere option agreement on the part of the lessee, will not be specifically enforced at the suit of the lessee.

Warner *v.* Page (Oklahoma), 159 Pacific, 264, p. 267, June, 1916.

CONSIDERATION AND MUTUALITY.

The fact that a lessor or grantor in an oil and gas lease or grant received more than $1,000 and after his death his widow received more than $1,200 for the privilege of commencing to drill for oil and gas at any time prior to a certain fixed date is an adequate consideration for the privilege of drilling, and the lease or grant can not be declared null and void merely because the lessee or grantee is not required to do anything more.

Cochran *v.* Gulf Refining Co. (139 Louisiana), 72 Southern, 718, p. 720, June, 1916.

PERFORMANCE OF OBLIGATION—CANCELLATION.

Where a lessee and grantee of a mineral lease or grant of land for gas and oil purposes for a limited term has paid an adequate consideration in cash and has complied with all of the obligations expressly imposed upon him, the lessor and grantor is not entitled to a cancellation of the contract or lease for the violation of an implied obligation on the part of the lessee and grantee.

Cochran *v.* Gulf Refining Co. (139 Louisiana), 72 Southern, 718, p. 721, June, 1916.

LEASE BY GUARDIAN OF INDIAN MINOR—VALIDITY.

An oil and gas lease for the term of 5 years made by the guardian of an Indian minor in Oklahoma and duly approved by the county court is a valid lease for its full term and so long thereafter as oil and gas continue to be found in paying quantities, notwithstanding

the fact that the Indian minor reached his majority shortly after the lease was executed and long before the period for its determination, and especially where after he reached his majority he did nothing whatever to avoid the lease.

Etchen *v.* Cheney, 235 Federal, 104, p. 106.

POWER OF GUARDIAN TO LEASE WARD'S LAND.

A guardian of a minor is without power to make an oil and gas mining lease covering his ward's property without the approval of the court having jurisdiction of the estate of the minor. And having made a lease with the approval of the court, the guardian is without power to change or modify the terms of the lease or bind the ward by any statement in regard to what the terms of the lease were or should be. The assent of the county court is an essential element to the validity of such a lease. If guardians are permitted to submit a lease to the court and thereafter bind their wards by statements, either oral or written, that the terms of the lease were a mistake, it would open a door to fraud and to the possible loss of the estates of minors.

Ardizzonne *v.* Archer (Oklahoma), 160 Pacific, 446, p. 447, October, 1916.

PROVISIONS FOR SURRENDER.

Where an oil and gas lease executed by a guardian and approved by the proper court prescribed the manner in which it might be surrendered by the lessee, no other mode could be adopted except by the consent of all the parties thereto. If the lease is to be surrendered and the rights of the minor to rentals be given up in any manner not prescribed in the lease, the approval of the proper court is a necessary requisite thereto. The consent of the court having jurisdiction of the minor's estate is necessary to render valid any mode of surrender other than that prescribed in the lease.

Ardizzonne *v.* Archer (Oklahoma), 160 Pacific, 446, p. 448, October, 1916.

FORFEITURE—FAILURE TO DEVELOP OR PAY RENTAL.

A land owner leased a certain described tract of land to the lessee for a period of 10 years for oil and gas purposes in consideration of $1 and certain stipulated covenants on the part of the lessee. The lessee, among other things, agreed to pay certain royalties from the oil and gas and to complete a well on the premises within four months from the date of the lease or pay at the rate of $80 in advance for each three months such completion was delayed. The consideration of $1 supported the four months' period in which the lessee had to complete a well, but supported no other stipulation in

the lease. The prospective royalties were the sole consideration for the execution of the lease on the part of the lessor and the agreement on the part of the lessee to complete a well within four months or pay for the delay, conferred an option on the lessee to drill or pay and a failure to do either forfeited the lease at the option of the lessor.

Brown *v.* Urlson (Oklahoma), 160 Pacific, 94, p. 95, October, 1916.

NATURE AND FORFEITURE.

An oil and gas lease is more than a mere license and creates in the lessee a corporeal interest in the land described. Such a lease is not in all respects similar to a lease for agricultural or other land purposes, but there is no vital difference as relates to forfeiture thereof for the nonpayment of money rent.

McKean Natural Gas Co. *v.* Walcott (Pennsylvania), 98 Atlantic, 955, p. 956, July, 1916.

FAILURE TO PAY RENT—FORFEITURE.

A provision in an oil and gas lease rendering it null and void for failure to pay the rent as stipulated is for the protection of the lessor, and in order to terminate the lease by reason thereof it requires affirmative action on his part. Notwithstanding the failure to pay the rent the tenancy continues until the lessor declares a forfeiture; and if before he takes action the rent due is paid or tendered it heals the breach and saves the tenancy.

McKean Natural Gas Co. *v.* Walcott (Pennsylvania), 98 Atlantic, 955, p. 956, July, 1916.

FORFEITURE PREVENTED.

An oil and gas lease for a term of 10 years provided that the lease should continue "so long thereafter as oil and gas can be produced in paying quantities or rental paid in advance as hereinbefore stated." The lease also provided that if gas was found in paying quantities the rental was to be $50 per annum for each gas well on the premise, payable in advance. All the terms of the lease were complied with on the part of the lessee, the wells required were drilled and the rent promptly paid for a period of 13 years, and on the 14th year the lessee forwarded his check for the amount due, but it reached the lessor a day after it was due. Under such circumstances a court of equity will not decree a forfeiture of the lease, as such a forfeiture would be unconscionable, and in such case equity has the power to prevent a forfeiture.

McKean Natural Gas Co. *v.* Walcott (Pennsylvania), 98 Atlantic, 955, p. 956, July, 1916.

FORFEITURE—WAIVER OF RIGHT.

The right of a lessor to forfeit oil and gas leases must be promptly asserted or it will be treated as waived. The tendency of the later judicial decisions is to frown on forfeitures where the rights of the parties insisting thereon can otherwise be adequately protected.

Bloom *v.* Rugh (Kansas), 160 Pacific, 1135, p. 1136, October, 1916.

CONTEMPORANEOUS ORAL AGREEMENT—FORFEITURE NOT PERMITTED.

Evidences of an oral agreement made at the time of the execution of an oil and gas lease to the effect that the lessor was to receive rent in 90 days if a well was not commenced on the premises is not sufficient to support an adjudication of forfeiture where it is shown that a well was drilled by the lessee during the term definitely fixed in the lease, producing 2,000,000 feet of gas per day, and especially where the lessor's rights can otherwise be adequately protected.

Bloom *v.* Rugh (Kansas), 160 Pacific, 1135, p. 1136, October, 1916.

FORFEITURE—LIABILITY AND PROOF OF DAMAGES.

In an action by a land owner and lessor against a lessee of an oil and gas lease for damages for failure to execute a release pursuant to the conditions of the lease and after it had become subject to forfeiture, and where such release was necessary to enable the owner to lease the premises to prospective lessees at a greatly advanced rental, he must prove either that he had a valid and enforceable contract with such prospective lessee, had the release by the lessee been executed when demanded, or that such prospective lessee would have completed the contract, regardless of its enforceability, had the release been executed.

Roger *v.* Milliken Oil Co. (Oklahoma), 160 Pacific, 872, p. 874, November, 1916.

IMPLIED COVENANT TO DEVELOP.

In an ordinary oil and gas lease there is no implied covenant by the lessee to protect the leased premises against drainage through flowing wells on adjacent land by drilling offset wells.

Stanley *v.* United Fuel Gas Co. (West Virginia), 90 Southeastern, 344, p. 344, October, 1916.

DUTY OF LESSEE TO DEVELOP.

During the period for which delay rentals, provided for in an oil and gas lease in lieu of drilling, have been paid, there is no implied covenant on the part of the lessee to protect the leased premises by drilling offset wells, and during such period the lessor is not entitled

to damages for failure of the lessee to drill offset wells; but there is an implied condition, in the event of drainage or immediate danger thereof from wells on adjoining lands, the lessee will, upon the demand of the lessor and notice of his purpose or intention to forfeit the lease in case of the lessee's failure to comply with the request and drill offset wells within the last period for which delay rentals have been or shall be accepted or commence to drill and diligently prosecute the work. But if the lessor makes no such demand and gives no such notice and accepts delay rentals, the lessee is excused from such development. If the lessor, after demand and notice on the lessee to drill such offset wells, accepts delay rentals he thereby waives his right to demand damages for failure of the lessee to drill.

Stanley *v.* United Fuel Gas Co. (West Virginia), 90 Southeastern, 344, p. 345, October, 1916.

TIME FOR PAYMENT OF RENT.

In an oil and gas lease where development is contemplated and an annual rent is provided for, if in case wells are not drilled in a stated time, the time of payment of rent is not of the essence of the contract, and payment at any reasonable time or upon reasonable demand would be sufficient to avoid forfeiture.

Bloom *v.* Rugh (Kansas), 160 Pacific, 1135, p. 1136, October, 1916.

ASSIGNMENT AND CONSTRUCTION.

A lessee of oil and gas leases assigned a part of his interests in the leases and agreed with his assignee to pay all the delay rentals until oil or gas was produced. The assignor stipulated that he was not to be bound to make exploration, but agreed that before he would suffer any of the leases to lapse, he would notify the assignee and would assign to him all leases which he might not desire to keep alive, and he thereby impliedly covenanted not to dispose of such leases to strangers without the consent of such assignee.

Millan *v.* Bartlett (West Virginia), 89 Southeastern, 711, p. 712, September, 1916.

ASSIGNMENT—BREACH OF COVENANT.

A covenant between a lessee of oil and gas lands and his assignee to the effect that he will not suffer any of the leases to lapse, but will notify the assignee and will assign to him all leases which he might not desire to keep alive, is a personal covenant, and does not pass by the transfer of the leases by the covenantor to a stranger so as to bind him.

Millan *v.* Bartlett (West Virginia), 89 Southeastern, 711, p. 712, September, 1916.

RIGHT OF ACTION FOR BREACH—ASSIGNMENT.

A right of action for a breach of the covenant of an oil and gas lease is assignable and no particular form of words is essential to pass the right of action, but words manifesting a clear intention to assign are sufficient.

Millan *v.* Bartlett (West Virginia), 89 Southeastern, 711, p. 713, September, 1916.

OPINION OF WITNESS AS TO VALUE.

A person experienced in the oil and gas industry and who is reasonably familiar with the lands on which particular leases exist, lying in a partly developed oil and gas territory, may be a competent witness to testify as to the value of such leases.

Millan *v.* Bartlett (West Virginia), 89 Southeastern, 711, p. 713, September, 1916.

LIABILITY OF ASSIGNEE.

An assignee of an oil and gas lease which contains a stipulation to the effect that all covenants and conditions therein shall be binding on the assignees of both parties, is liable for the rental payment prescribed in the lease so long as he retains possession under the lease.

Ardizzonne *v.* Archer (Oklahoma), 160 Pacific, 446, p. 448, October, 1916.

MINING PROPERTIES.

STATUTORY LIENS.

NOTICE BY LESSOR TO PREVENT LIENS.

Under section 2221 (Revised Laws of Nevada) the owner of a leased mine that is worked by the lessee, in order to prevent his interest from being subject to liens of employees of the lessee must give the required notice by posting the same in a conspicuous place on the premises. If a notice is posted by the owner and lessor in good faith, with the intent and purpose that it should remain as long as a notice would remain in a place of that nature, the ordinary intendment of the statute has been observed and the notice given. But a notice posted at the collar of a mine shaft which the owner knew would necessarily be destroyed in preparing the shaft for mining operations and which the owner knew was destroyed before the persons claiming the lien were employed by the lessee, is insufficient. Persons employed by the lessee after the destruction of the notice are not to be bound thereby, where it appears that the work contemplated in the contract between the lessor and the lessee necessitated a destruction of the notice.

Phillips *v.* Snowden Placer Co. (Nevada), 160 Pacific, 786, p. 790, November, 1916.

SUFFICIENCY OF NOTICE GIVEN BY LESSOR.

Under the Nevada statute (Revised Laws, sec. 2221) the owner and lessor of a mine must post a notice in a conspicuous place on the premises to the effect that his interest in the property will not be subject to liens of the lessee's employees. The statute only says that a notice should be posted, but says nothing about maintaining such notice. But the mere posting of any sort of a notice in a conspicuous place will not necessarily be a compliance with the statute. A notice might be posted so written that it would not remain intelligible for a day and this manifestly would not comply with the law. The purpose of the statute is to give actual notice, and the law exacts a reasonable compliance with the statute. A notice written in lead pencil on a piece of cardboard or a piece of paper which had been exposed to the elements might in every respect comply with

the statute; but if it was so posted that any person of common sense would know that it would in a few days be effaced from exposure to the elements, a court would be justified in holding such a posting not to be in compliance with the statute.

Phillips *v.* Snowden Placer Co. (Nevada), 160 Pacific, 786, p. 790, November, 1916.

FORECLOSURE—JURISDICTION OF JUSTICE.

Under the statute of Nevada a justice of the peace has no jurisdiction of an action to foreclose two or more mechanics' liens where the aggregate amount of such leins exceeds $300, notwithstanding each of the several liens sought to be enforced is for an amount less than $300.

Phillips *v.* Snowden Placer Co. (Nevada), 160 Pacific, 786, p. 787, November, 1916.

TAXATION.

VALUATION OF MINING PROPERTY—FIXING RATE.

Under the statute of Pennsylvania the valuation of mining property for taxation should be made and completed before the rate of taxation is fixed. A levy is prematurely made where it was fixed before the assessment of the property was finally settled. The fact that the owner of the mining property pays a part of such taxes under protest pending the outcome of appeals to the court from the valuation placed upon the property, is unavailing where no complaint was made as to the time or method of the levy and where no objection was made to the levy for more than a year after such partial payments were made.

Philadelphia & Reading Oil & Coal Co. *v.* Schmidt (Pennsylvania), 98 Atlantic, 964, p. 965, July, 1916.

VALIDITY OF LEVY—POWER OF TAXING OFFICERS.

Where taxing officers possess the right and authority to levy and collect taxes on mining property for specified purposes a mistake in the valuation of the property subject to taxation will not amount to usurpation of authority, such as would render the tax wholly void.

Philadelphia & Reading Oil & Coal Co. *v.* Schmidt (Pennsylvania), 98 Atlantic, 964, p. 966, July, 1916.

BASIS OF ASSESSMENT—BOOKS OF CORPORATION.

The Government can not base a claim for taxes under the corporation excise tax law of August 5, 1909 (36 Stat., 112) on mere bookkeeping. The mere appraisement of property by a corporation on its books can not form a basis of assessment of taxes on net income

although the books show that during the tax year the value of the property was increased by the amount on which the Government claims the regular tax rate.

Forty Fort Coal Co. *v.* Kirkendall, 233 Federal, 704, p. 707.

RECOVERY OF TAXES WRONGFULLY PAID.

Under the corporation excise tax law of August 5, 1909 (36 Stat., 112), imposing taxes on the income of corporations there can be no assessment of income, although a certain amount of money was carried on the books of the corporation in surplus accounts, but which was not properly surplus, or net income or profit, but was merely a return of capital asset, being an amount which represented the minimum value of the coal in the ground. Under a law taxing incomes a mining corporation can not be taxed on the theory that the full value of the coal mined represented income when the corporation was entitled to deduct therefrom a sum equal to the depreciation in the mining property. The principal is illustrated by the proposition that if a mine owner has a ton of coal in the ground worth 15 cents and he digs it up and sells it for 15 cents, the amount received therefor is not income but only a return to him of the value of his coal as part of his capital asset.

Forty Fort Coal Co. *v.* Kirkendall, 233 Federal, 704, p. 707.

TAX SALE—TITLE ACQUIRED BY COTENANT.

The rule that one tenant in common is prohibited from purchasing his cotenant's interest does not apply to mining property where the interests of the different owners are separately assessed and sold for the payment of taxes, as the purchase by one cotenant in such case is not to the prejudice of the other.

Hannley *v.* Federal Mining & Smelting Co., 235 Federal, 769, p. 773.

ASSESSMENT OF SEPARATE INTERESTS OF COTENANTS.

Under the statute of Idaho (Revised Code, sec. 1752) the legal assessor is authorized to value for assessment purposes separately the several interests of part owners of mining property and their several interests in the proceeds of the operation thereof.

Hannley *v.* Federal Mining & Smelting Co., 235 Federal, 769, p. 775.
Tong *v.* Maher, 45 Montana, 142 (122 Pacific, 279).

IDAHO STATUTE CONSTITUTIONAL.

Sections 1863 to 1872, inclusive, of the Revised Code of Idaho, providing for the taxation of mining property by assessing the net proceeds of operation for the preceding year in addition to the value

of surface and improvements is not in violation of the constitutional provision which requires all taxes to be levied in proportion to value and to be uniform upon the same class of subjects. The statute may be highly discriminating in favor of mining property, but this does not go to its validity, as the legislature has such power, and the net-income method of mine assessment is not obnoxious to the constitutional provision.

Hannley *v.* Federal Mining & Smelting Co., 235 Federal, 769, p. 775.

LICENSE FEE ON BUSINESS—CONSTRUCTION OF STATUTE.

The statute of Alaska imposing a license of one-half of one per cent on a net income over and above $5,000 per annum from mining and certain other lines of business is not invalid because it is not explicit and because its application calls for a postponement of the payment of the tax until the amount of revenue from the business taxed can be ascertained. The fact that it is inartificially drawn and that its exact enforcement may be difficult should not make it invalid if the language used expresses a plain meaning by the lawmaking body. In the light of the methods pursued in Alaska for the collection of license taxes imposed by acts of Congress, this act must be construed to require a person or corporation engaged in mining to apply to the clerk of the district court, and on an order of the judge of the court, the license is issued and the licensee shall consequently pay the license fee based on the percentage of the net annual income of his business over and above $5,000. The fact that the procedure laid down by the legislature if literally obeyed in the arrangement of the steps required, would defeat the plain object of the legislation, will not justify the courts in declaring the statute invalid where it can be made workable.

Alaska Mexican Gold Mining Co. *v.* Territory of Alaska, 236 Federal, 64, p. 69.

PROCEDURE FOR OBTAINING LICENSE.

Under the Alaska act, the procedure contemplated by the Alaska statute of May 1, 1913 (Alaska Laws, 1913, chap. 52), and the amendatory act of April 29, 1915 (Alaska Laws, 1915, chap. 76), is that the applicant for a license shall file his application with the clerk of the district court, and the clerk shall keep a record of such application and all recommendations and remonstrances for or against granting of the license applied for. The court then acts upon such recommendations and remonstrances and when the court has so acted the license shall be issued by the clerk in compliance with the order of the court or judge. A mining corporation that has not paid the license fee, and never in fact made application for a license, is in no

position to assail the validity of the law on the ground of possible abuse of power vested in the court or the judge called on to make an order in respect to its application. Such a question can be raised only after a license has been denied.

Alaska Mexican Gold Mining Co. *v.* Territory of Alaska, 236 Federal, 64, p. 69.

CIVIL ACTION TO RECOVER LICENSE FEE.

The amendatory act of April 29, 1915 (Alaska Laws, 1915, chap. 76), not only provides a remedy for the collection of the license fees imposed by the original act of 1913 (Alaska Laws, chap. 52), but it also provides that the statutory remedy shall not be exclusive but any appropriate remedy may be had. The fact that in a civil action to recover an unpaid tax from a delinquent mining corporation it may be necessary to resort to sources of information outside of the statute to arrive at the amount on which the percentage of tax fixed by the statute is to be calculated, can not affect the right to recover. The statutory charge is certain for the purposes of an action in debt, because it can be made certain through action in court.

Alaska Mexican Gold Mining Co. *v.* Territory of Alaska, 236 Federal, 64, p. 68.

LICENSE FEES—RECOVERY.

The statute of Alaska (Act of May 1, 1913) requires that persons engaged in mining and certain other named lines shall pay one-half of 1 per cent on the net income over and above $5,000 per annum. The act also provides that any person or corporation doing or attempting to do business in violation of its provisions or without first having paid the license required shall be deemed guilty of misdemeanor and on conviction certain specified penalties shall be imposed. The act further provides that if any person or corporation shall fail to pay the license required and shall fail to pay any fine imposed judgment may be entered and process issued for the enforcement of its collection in the same manner as a judgment in civil proceedings.

The amendatory act of April 29, 1915 (Alaska laws, 1915, chap. 76), provides a civil remedy for the collection and enforcement of taxes and that the special remedies authorized by the special amendatory act shall not be exclusive, and any appropriate remedy, civil or criminal, may be invoked in the collection of taxes. This is a clear expression that the intention of the legislation was that the remedy should be under the act of 1915; and the grant of a new remedy in unequivocal terms, even though retroactive, is not necessarily void legislation.

Alaskan Mexican Gold Mining Co. *v.* Territory of Alaska, 236 Federal, 64, p. 68.

POWER OF MUNICIPALITY TO TAX OIL COMPANY.

The statute of Tennessee (Acts of 1915, chap. 101) authorizing privilege taxes on oil warehouses used for the purpose of selling or distributing oil does not authorize a municipality to levy a privilege tax on the depot or station of an oil company from which it distributes its products, where such depot or station is entirely outside of the limits of the municipality.

Gulf Refining Co. *v.* City of Knoxville (Tennessee), 188 Southwestern, 798, p. 799, September, 1916.

TRESPASS.

ELECTION OF REMEDY.

In an action between the owners of adjoining mining locations involving the ownership of certain ore bodies claimed by both parties, each, as shown by the prayers of his pleading, sought to quiet title, to enjoin the assertions of adverse claims, and the further entry and mining and taking of ores; and each demanded that the other account for all ores taken and each have a decree for the value of such ores wrongfully taken and for other and further relief. The action, in so far as it related to the ownership of the ores, is not one for damages, but for an accounting for the value of ores taken. It is neither in fact nor theory an action for damages for ores as personal property. The plaintiff, having elected his remedy, can not, after a long delay and because of a rise in the value of the minerals in dispute, change his remedy and claim damages on the theory of a conversion.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 575.

ACCOUNTING UNDER AGREEMENT.

The ownership of certain ore bodies was in dispute between adjoining owners of mining locations, but mining was continued under an agreement that when ownership was determined to the satisfaction of both an accounting and settlement would be had, and mining did continue under such an arrangement. The mining and taking by each is not conversion but sounds in contract and the only remedy to either is to determine ownership and to compel the promised accounting. The conduct of the parties under such circumstances and all other evidence are persuasive that the difficulties in the way of a determination of ownership of the ores induced an understanding for mutual advantage, labor, and aid to that end, pending which both might mine some of the ores, dispose of them, and ownership determined and an accounting had and the balance struck and paid.

Under such an arrangement neither party can have a judgment for damages as for an unlawful conversion.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 576.

LIABILITY OF INNOCENT TRESPASSER.

The presumption is that ores mined below the surface of the claim belong to the locator or owner of such claim, in the absence of proof that such ores are in a vein apexing outside of the claim in which they are found. Where a plaintiff suing for an accounting on the ground of an alleged trespass of one claim owner in taking ores from a vein that apexed in the plaintiff's older and superior claim, an admission of the plaintiff that the ores were taken by the defendant in the honest belief that he owned the same, reduces the trespass to an innocent trespass and requires that the damages be assessed accordingly and not under the rule established in case of willful trespass. Under such circumstances the award of damages to the owner of ores is the value in situ. This is arrived at by deducting the reasonable cost of mining and marketing or reducing to money or what it cost the trespasser if less, from the amount that ought reasonably to have been then received for or from such ores and the remainder being the value of the ores in situ, and the amount that is to be rewarded to the owner.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 576.

LIABILITY FOR TAILINGS.

In an action by one mine owner against an adjoining owner for trespass and damages and an accounting for ores mined by the defendant in a vein apexing in the plaintiff's claim, the plaintiff can not recover the value of the mill tailings which the defendant did not save because they were not valuable at the time they were mined or milled, although valuable at the time of the trial of the case, but they added nothing to the value of the ore when taken.

Clark-Montana Realty Co. *v.* Butte & Superior Copper Co., 233 Federal, 547, p. 570.

DAMAGES FOR INJURIES TO MINERS.

ELEMENTS OF DAMAGES.

FUTURE SUFFERING—PLEADING.

In an action by a miner for damages for injuries shown to be permanent and reasonably certain to be endured in the future as a direct and proximate result of the injury, the plaintiff is entitled to recover damages for future as well as past pain and suffering; and as such suffering is an element of general damages, it is not necessary that it be specially pleaded.

Hendrickson v. New Hughes Jellico Coal Co. (Kentucky), 189 Southwestern, 704, p. 705, December, 1916.

INTERSTATE COMMERCE.

TRANSPORTATION OF NATURAL GAS.

Natural gas purchased or procured in a State and transported from such State and sold or delivered to parties in other States is an article of interstate commerce and does not lose its interstate character by the fact that a small percentage of the gas transported in a pipe line is added to the volume from gas procured in the State of the delivery. The purchase or procuring of interstate gas in one State, its transportation, sale, and delivery to parties in other States is interstate commerce, and the parties so transporting and receiving the natural gas are engaged in interstate commerce. The attempted enforcement by the State in which such gas is delivered of statutes which either by a direct prohibition of such commerce in such gas or by inhibition by sale of gas in the State at any price or at any price above a price so low that the laws of trade make it impossible to purchase it or procure the gas in another State and to sell and deliver it in the prohibiting State at the price named with profit is a substantial burden, and is an undue influence with interstate commerce in violation of the commerce clause of the Constitution of the United States.

Landon *v.* Public Utilities Commission of Kansas, 234 Federal, 152, p. 164.

QUARRY OPERATIONS.

LEASE OF STONE QUARRY—DUTY TO OPERATE.

The lease of a stone quarry provided that the lessee should pay as rent or royalty the price of 6 cents per cubic yard for stone removed from the quarry, and 9 cents per cubic yard for rubble stone found and sold. The lease was to extend as long as the quarry was suitable for quarrying purposes. The lessor was to have the privilege of examining the books of the lessee when desired to verify accounts rendered. Such a lease is to be construed as given for the mutual benefit of the parties and given for the purpose of quarrying stone and there is an implied covenant that the lessee will quarry stone with reasonable diligence, so long as found in quantity and kind that may be quarried at a profit to the lessee. The fact that the lessee could use the property for any other lawful purpose in no way militates against the proposition that the lease was for the purpose of quarrying stone and that he must quarry stone diligently so long as stone could be quarried at a profit.

Stoddard v. Illinois Improvement & Ballast Co. (Illinois), 113 Northeastern, 913, p. 915, October, 1916.

BREACH OF COVENANT IN LEASE—BURDEN OF PROOF.

A lessee of a stone quarry in possession of the premises, who understood the business of quarrying and selling stone, knew the capacity of the machinery on the premises and what machinery was required to successfully quarry the stone and with knowledge that the premises had been tested and stone had been found in great quantities has, in an action for damages for breach of covenant to operate, the burden of proving that the quarry could not be operated at a profit.

Stoddard *v.* Illinois Improvement & Ballast Co. (Illinois), 113 Northeastern, 913, p. 915, October, 1916.

ASSIGNEE OF LEASE—DUTY AND LIABILITY.

The assignee of the lease of a quarry for the entire term remaining unperformed is privy in estate with the lessor and is bound to observe all the obligations of the assignor. The assignee of such

lease having retained possession of the premises and having failed to surrender the lease or to develop the property is liable for the amount of stone he could, by reasonable diligence, have quarried and sold at a profit for the remaining term of the lease, at the price fixed in the lease.

Stoddard v. Illinois Improvement & Ballast Co. (Illinois), 113 Northeastern, 913, p. 915, October, 1916.

DAMAGES FOR FAILURE TO OPERATE QUARRY.

The fact that the lessee of a stone quarry placed therein insufficient machinery with which to profitably operate the quarry, is no defense in an action against him for damages for breach of the covenant of the lease to operate the quarry. It was the lessee's duty to provide machinery that would do the work at a profit, and to avoid liability he must allege and prove that the quarry could not be operated at a profit.

Stoddard *v.* Illinois Improvement & Ballast Co. (Illinois), 113 Northeastern, 913, p. 916, October, 1916.

PUBLICATIONS RELATING TO MINING LAWS.

A limited supply of the following publications of the Bureau of Mines has been printed and is available for free distribution until the edition is exhausted. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of special interest to them. Requests for publications should be addressed to the Director, Bureau of Mines.

The Bureau of Mines issues a list showing all its publications available for free distribution, as well as those obtainable only from the Superintendent of Documents, Government Printing Office, on payment of the price of printing. Interested persons should apply to the Director, Bureau of Mines, for a copy of the latest list.

PUBLICATIONS AVAILABLE FOR FREE DISTRIBUTION.

BULLETIN 75. Rules and regulations for metal mines, by W. R. Ingalls and others. 1915. 296 pp., 1 fig.

BULLETIN 90. Abstracts of current decisions on mines and mining, December, 1913, to September, 1914, by J. W. Thompson. 1915. 176 pp.

BULLETIN 101. Abstracts of current decisions on mines and mining, October, 1914, to April, 1915, by J. W. Thompson. 1915. 138 pp.

BULLETIN 113. Abstracts of current decisions on mines and mining, reported from May to September, 1915, by J. W. Thompson. 1916. 124 pp.

BULLETIN 118. Abstracts of current decisions on mines and mining, reported from October to December, 1915, by J. W. Thompson. 1916. 74 pp.

BULLETIN 126. Abstracts of current decisions on mines and mining, reported from January to April, 1916, by J. W. Thompson. 1916. 90 pp.

BULLETIN 143. Abstracts of current decisions on mines and mining, reported from May to August, 1916, by J. W. Thompson. 1916. 72 pp.

TECHNICAL PAPER 138. Suggested safety rules for installing and using electrical equipment in bituminous coal mines, by H. H. Clark and C. M. Means. 1916. 36 pp.

PUBLICATIONS THAT MAY BE OBTAINED ONLY THROUGH THE SUPERINTENDENT OF DOCUMENTS.

BULLETIN 61. Abstracts of current decisions on mines and mining, October, 1912, to March, 1913, by J. W. Thompson. 1913. 82 pp. 10 cents.

BULLETIN 65. Oil and gas wells through workable coal beds; papers and discussions, by G. S. Rice, O. P. Hood, and others. 1913. 101 pp., 1 pl., 11 figs. 10 cents.

BULLETIN 79. Abstracts of current decisions on mines and mining, March to December, 1913, by J. W. Thompson. 1914. 140 pp. 20 cents.

BULLETIN 94. United States mining statutes annotated, by J. W. Thompson. 1915. 1,772 pp. In two parts, not sold separately. Cloth, $2.50 per set; paper, $2.

TECHNICAL PAPER 53. Proposed regulations for the drilling of oil and gas wells, with comments thereon, by O. P. Hood and A. G. Heggem. 1913. 28 pp., 2 figs. 5 cents.

○